[JOINT COMMITTEE PRINT]

# COMPARISON OF DIFFERING REVENUE PROVISIONS OF THE REVENUE RECONCILIATION ACT OF 1989 (H.R. 3299) AS PASSED BY THE HOUSE AND THE SENATE

**Prepared for the Conferees**
**By the Staff**
**of the**
**Joint Committee on Taxation**

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# LIST OF IDENTICAL REVENUE PROVISIONS

The following revenue provisions are identical (including effective dates) in the House bill (Title XI) and the Senate amendment (Title VI). These provisions are not described in this spreadsheet comparison.

***Corporate Provisions***

- Provision relating to regulated investment companies: Require mutual funds to distribute 98 percent of ordinary income (sec. 11204(a) of the House bill and sec. 6204(a) of the Senate amendment).
- Require basis reduction for nontaxed portion of dividends on self-liquidating stock (sec. 11206 of the House bill and sec. 6206 of the Senate amendment).
- Modify excess loss account recapture rules to prevent reduction of basis (sec. 11207 of the House bill and 6207 of the Senate amendment).
- Clarify Treasury regulation authority relating to debt/equity (sec. 11208(a) of the House bill and sec. 6208(a) of the Senate amendment).
- Require reporting to the IRS of certain acquisition and recapitalization transactions (sec. 11208(b) of the House bill and sec. 6208(b) of the Senate amendment).
- Require corporate estimated tax payment on tax liabilities for certain S corporation income (sec. 11209 of the House bill and sec. 6209 of the Senate amendment).
- Limitation on carrybacks of certain net operating losses of C corporations (sec. 11211 of the House bill and sec. 6210 of the Senate amendment).

***Foreign Provision***

- Resourcing income to prevent avoidance of foreign tax credit limitation rules (sec. 11402 of the House bill and sec. 6402 of the Senate amendment).

***Employment Tax Provision***

- Impose income tax withholding on the wages of certain agricultural workers (sec. 11631 of the House bill and sec. 6631 of the Senate amendment).

***Miscellaneous Provision***

- Denial of retroactive certification for work incentive (WIN) tax credit (sec. 11644 of the House bill and sec. 6682 of the Senate amendment).

# INTRODUCTION

This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a comparison of the revenue provisions of the Revenue Reconciliation Act of 1989 (H.R. 3299) as passed by the House (Title XI) and by the Senate (Title VI).

The first part lists the identical revenue provisions of the House bill and the Senate amendment.

The second part provides a description of the differing revenue provisions of the House bill and the Senate amendment. (This document does not include reference to comparable Senate Finance Committee amendments deleted by the Senate leadership amendment.)

A separate staff document provides a comparison of the child care and earned income credit provisions within the jurisdiction of the House Committee on Ways and Means and the Senate Committee on Finance.

A separate staff document provides a comparison of the differing technical corrections provisions of the House bill and the Senate amendment.

A separate staff document provides a comparison of the estimated revenue effects of the revenue reconciliation provisions of the House bill and the Senate amendment.

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[1] This document may be cited as follows: Joint Committee on Taxation, *Comparison of Differing Revenue Provisions of the Revenue Reconciliation Act of 1989 (H.R. 3299) as Passed by the House and the Senate* (JCS–18A–89), October 24, 1989.

| *ITEM* | *PRESENT LAW* | *HOUSE BILL* | *SENATE AMENDMENT* |
|---|---|---|---|
| A. Corporate Provisions | | | |
| **1. Treatment of distributions by certain corporations filing consolidated returns (sec. 11201 of the House bill and sec. 6201 of the Senate amendment)** | A distribution from a corporation generally is treated as a dividend to the extent of the distributing corporation's current or accumulated earnings and profits. A dividend received by a corporation is eligible for the dividend received deduction.<br>Under the consolidated return regulations, the taxable income of a group of affiliated corporations generally is computed as the sum of the taxable incomes and losses of all members of the group. However, the earnings and profits of each member of the group generally is computed on a separate company basis (and adjusted for that member's allocable share of the undistributed earnings and profits of lower tier members).<br>Thus, a distribution to a nonmember shareholder from a member corporation that joins in the filing of a consolidated return may be a dividend (because such distribution is from the distributor's separate company earnings and profits), even though such earnings were not subject to Federal income tax (because such earnings were offset by losses from other members of the group). | *In general.*--The House bill requires earnings and profits to be computed on a consolidated basis for purposes of determining whether any distribution from a member of the group to a nonmember is a dividend. | *In general.*–The Senate amendment provides that a portion of a dividend on subsidiary from the current earnings and profits of a subsidiary of an affiliated group filing a consolidated return will not be eligible for the dividends received deduction to the extent the earnings of such subsidiary were not subject to tax because of losses or credits from other members of the group. |
| | | *Determination of whether a distribution is a dividend.*--A distribution to a nonmember by a member of an affiliated group of corporations filing a consolidated return with respect to stock issued after July 10, 1989, will be considered a dividend to the extent such distribution is from | *Determination of whether a dividend is eligible for the dividends received deduction.*--The portion of a dividend with respect to the stock of a subsidiary member of an affiliated group filing a consolidated return that is not eligible for the dividends received deduction is computed by multiplying the lesser |

| *ITEM* | *PRESENT LAW* | *HOUSE BILL* | *SENATE AMENDMENT* |
|---|---|---|---|
|  |  | the consolidated earnings and profits of the group for periods after July 10, 1989, or the separately computed earnings and profits of the distributing corporation. For this purpose, separately computed earnings and profits means (1) the pre-July 10, 1989 affiliated earnings and profits of the distributor and (2) the earnings and profits of the distributor before it became a member of the group. | of (1) the amount of the dividend from the current earnings and profits of the distributor or (2) the consolidated loss offset, by a fraction. The numerator of the fraction is the consolidated loss offset and the denominator is the separately computed taxable income of the distributor. For this purpose, the consolidated loss offset is the sum of certain losses and deduction equivalents of certain credits from other members of the group that offset the separately computed taxable income of the distributor. |
|  |  | ***Effective date***.--The provision is generally effective for distributions after July 10, 1989, but does not apply for distributions with respect to subsidiary stock issued before that date, or after that date pursuant to a binding written contract. Auction rate preferred stock is not considered issued at the time of each auction. | ***Effective date***.--The provision is effective for distributions after October 2, 1989, with respect to subsidiary preferred stock issued after that date unless pursuant to a binding written contract in effect on such date. Auction rate preferred stock is not considered issued at the time of each auction. |
|  |  | The provision does not apply to auction rate preferred stock issued no later than 30 days after enactment of the provision if the issuing subsidiary was incorporated and a rating agency retained for the purpose of issuing such stock, prior to July 10, 1989. |  |
|  |  | Grandfathered stock ceases to be grandfathered in the case of certain transactions in which the subsidiary leaves the group. An election is available to recompute earnings and profits for periods prior to July 11, 1989. | Grandfathered stock ceases to be grandfathered in certain cases where the issuing corporation leaves or joins a consolidated group or where stock is retired or repurchased unless pursuant to a binding contract to reissue. |

| *ITEM* | *PRESENT LAW* | *HOUSE BILL* | *SENATE AMENDMENT* |
|---|---|---|---|
| **2. Treatment of certain high-yield original issue discount (OID) obligations (sec. 11202 of the House bill and sec. 6202 of the Senate amendment)** | Original issue discount (OID) is the excess of the stated redemption price at maturity over the issue price of a debt instrument. The issuer of a debt instrument with OID generally accrues and deducts the discount, as interest, over the life of the obligation even though the amount of such interest is not paid until the debt matures. The holder of such a debt instrument also generally includes the OID in income as interest on an accrual basis. | A disqualified discount obligation issued by a corporation is treated as preferred stock. Issuers and holders alike are subject to this treatment. The provision does not apply to debt instruments issued by a cooperative housing corporation, exempt organization, or S corporation.<br>The provision applies to any debt instrument that has a term of more than five years, significant OID, and a yield in excess of 5 percentage points over the applicable Federal rate.<br>***Effective date.***--Instruments issued after July 10, 1989. The provision does not apply to an instrument issued after July 10, 1989, in connection with an acquisition completed (or for which there was a commitment to complete) before July 11, 1989, so long as the significant terms of such instrument were determined before July 11, 1989, in a written document transmitted to a government regulatory agency or prospective party to the issuance or acquisition.<br>In addition, the provision does not apply to instruments issued as interest payments on a grandfathered instrument. Finally, a grandfathered instrument can be refinanced without being subject to the provision so long as its term, issue price, and redemption price are not increased (and periodic interest payments not reduced) by the refinancing. | The interest deduction for OID with respect to certain instruments is deferred until actually paid. The holder, however, continues to include such discount, as interest, in income as it accrues.<br>The provision applies to the same instruments covered by the House bill, except that no exception is provided for instruments issued by housing cooperative corporations or exempt organizations.<br>***Effective date.***--Same as the House bill, except that a maturity date not otherwise determined is considered determined so long as the actual term of the instrument does not exceed ten years. In addition, the provision does not apply to any instrument issued after July 10, 1989, so long as the significant terms of the instrument do not exceed the terms contained in the last bankruptcy reorganization plan filed on or before that date. |

| *ITEM* | *PRESENT LAW* | *HOUSE BILL* | *SENATE AMENDMENT* |
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| **3. Limit nonrecognition treatment when securities are received in certain section 351 transactions (sec. 11203 of the House bill and sec. 6203 of the Senate amendment)** | No gain or loss is recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation and immediately thereafter such person or persons are in control of the corporation (sec. 351). Accordingly, a transferor may transfer appreciated property to a corporation in exchange for stock and a debt obligation of the corporation that is a security, without recognition of gain.<br>Debt obligations that are not considered to be securities under section 351 are treated as "boot." A transferor who receives boot is taxed on the lesser of the amount of the boot or the gain realized on the exchange.<br>Under the corporate reorganization provisions, if a taxpayer transfers property in a reorganization and receives securities with a principal amount in excess of any securities surrendered, such excess is treated as boot. Such a taxpayer must recognize gain, if any, to the extent of the boot received in the exchange.<br>The receipt of any debt obligation constituting boot generally qualifies for installment sale treatment. | *In general.*--Securities received in certain section 351 transactions are treated as boot. | *In general.*--Same as the House bill, with the exceptions noted below. |
| | | *Nature of consideration received.*--In the case of both corporate and noncorporate transferors, securities received in section 351 transactions are treated as boot where either (i) the holder of the securities is substantially protected against the risks of the issuer's business, or (ii) the fair market value of stock received is less than 25 percent of the total fair market value of all property received in the exchange. | *Nature of consideration received.*--No provision. |
| | | *Nature of transferor.*--In the case of property transferred by a corporation, all securities received in a section 351 transaction are treated as boot, unless (i) the exchange is pursuant to a plan of reorganization, (ii) the stock or securities received are distributed in a section 355 transaction, or (iii) the transferor, immediately after the exchange, owns 80 percent of the stock in the transferee (provided that the transfer is not part of a plan to reduce the transferor's interest below the 80-percent level). | *Nature of transferor.*--Same as House bill, with the following exceptions: (i) the general rule (i.e., that all securities received in a section 351 transaction are treated as boot) is applied to all transferors, both corporate and noncorporate; and (ii) there is no exception for transfers where a corporate transferor owns 80 percent of the transferee immediately after the exchange. |
| | | ***Effective date.***--The provision generally applies to transfers after July 10, 1989 (other than transfers pursuant to a written binding contract in effect on that date and at all times thereafter before such transfer). The provision with respect to corporate transferors, however, applies to transfers after July 11, 1989 (other than transfers pursuant to a written binding contract in effect on that date and at all times thereafter before such transfer) | ***Effective date.***--The provision applies to all transfers after October 2, 1989, unless the transfer was pursuant to a written binding contract in effect on that date and at all times thereafter before such transfer. In addition, the provision applies to transfers made by C corporations after July 11, 1989 and before October 3, 1989, other than (1) transfers where (i) the transferor, immediately after the transfer, owns 80 percent of the transferee's stock and (ii) |

| *ITEM* | *PRESENT LAW* | *HOUSE BILL* | *SENATE AMENDMENT* |
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|  |  |  | the transfer was not part of a plan to reduce the transferor's interest below the 80-percent level, and (2) transfers pursuant to a written binding contract in effect on July 11, 1989 and at all times thereafter before such transfer. |
| 4. Provisions relating to regulated investment companies |  |  |  |
| *a. **Adjust basis for mutual fund load charges only if shareholder holds shares for specified period** (sec. 11204(b) of the House bill and sec. 6204(b) of the Senate amendment)* | *a.* A shareholder's basis in shares purchased in a regulated investment company ("mutual fund") includes an advance charge for sales fees ("load charge") upon purchase of shares. | *a.* A load charge is not taken into account in determining a shareholder's basis in mutual fund shares that are sold or exchanged within thirty days if the shareholder subsequently acquires mutual fund shares pursuant to a reinvestment right. A reinvestment right is the right to reinvest the proceeds from the sale or exchange of the shares at a reduced charge in one or more mutual funds. | *a.* Generally the same as the House bill, except that the required holding period before which the load charge is taken into account in determining basis is six months. |
|  |  | ***Effective date***.--Load charges incurred after July 10, 1989, in taxable years ending after such date. | ***Effective date***.--Load charges incurred after October 3, 1989, in taxable years ending after such date. |
| *b. **Require mutual funds to include dividend income on ex-dividend date** (sec. 11204(c) of the House bill and sec. 6204(c) of the Senate amendment)* | *b.* Dividends from stock owned by a regulated investment company (RIC), commonly called a "mutual fund," are includible in the company's income when received. | *b.* The bill requires that a mutual fund include a dividend received by it in income when the stock becomes ex-dividend with respect to the dividend. | *b.* Generally the same as the House bill, except that if a mutual fund receiving a dividend did not own the stock when the stock became ex-dividend, the dividend is includible in income on the date the fund acquired the stock. |
|  |  | ***Effective date***.--Dividends on stock becoming ex-dividend after date of enactment. | ***Effective date***.--Same as House bill. |

| *ITEM* | *PRESENT LAW* | *HOUSE BILL* | *SENATE AMENDMENT* |
|---|---|---|---|
| **5. Reduce built-in gain and loss threshold for sections 382 and 384 (sec. 11205 of the House bill and sec. 6205 of the Senate amendment)** | Sections 382 and 384 of the Code restrict the use of built-in losses and built-in gains of a corporation when there are certain changes in the control of a corporation. These rules apply only if the net unrealized built-in loss or built-in gain exceeds 25 percent of the fair market value of the assets of the corporation.<br>Under the minimum tax adjusted current earnings regime, built-in losses are limited, without a threshold, if there is a change of ownership under section 382. | The restrictions in sections 382 and 384 on the use of built-in gains and built-in losses of a corporation will apply if the built-in loss or built-in gain exceeds the lesser of (1) 15 percent of the fair market value of the assets of the company or (2) $10 million.<br>A corresponding threshold is provided for built-in losses under the minimum tax adjusted current earnings regime.<br>*Effective date*.--Generally effective for ownership changes and acquisitions after July 10, 1989. The provision does not apply to any ownership change or acquisition pursuant to a written binding contract in effect on July 10, 1989, and at all times thereafter. | Generally the same as the House bill, except that the restrictions will apply if the built-in gain or built-in loss exceeds the lesser of (1) 15 percent of the fair market value of the assets of the company or (2) $25 million.<br>*Effective date*.--Generally effective for ownership changes and acquisitions after October 2, 1989. The provision does not apply t any ownership change or acquisition pursuant to a written binding contract in effect on October 2, 1989, and at all times thereafter. In addition, the provision does not apply to any ownership change or acquisition of a corporation resulting from a bankruptcy reorganization of such corporation if the petition was filed with the court before October 3, 1989. |
| **6. Treasury study of "debt vs. equity" and integration issues (sec. 11208(c) of the House bill)** | Interest on debt is generally deductible by the issuer and is includible in the income of the holder. In the case of tax-exempt or foreign holders, however, the interest is not taxable with the result that neither the issuer nor the holders pay any tax on income with respect to amounts distributed as interest.<br>The U.S. income tax system is not integrated, i.e., corporations and their shareholders are generally treated as separate taxable entities. Thus, income earned by a corporation and distributed to shareholders may be taxed twice: once at the corporate level when earned and again at the shareholder level when such income is | The Treasury Department is required to study the following: (1) whether the present law distinctions between debt and equity are meaningful and whether there are cases in which it would be appropriate to recharacterize currently deductible interest expense, in whole or in part, as nondeductible dividends or vice versa; (2) the policy and revenue implications of proposals that would integrate the corporate and individual income tax systems; and, (3) the policy and revenue implications of the current tax treatment of corporate distributions with respect to debt and equity owned by tax-exempt entities and foreign persons. | No provision. |

| *ITEM* | *PRESENT LAW* | *HOUSE BILL* | *SENATE AMENDMENT* |
|---|---|---|---|
| | distributed to shareholders. | The Treasury Department is required to report to the Ways and Means Committee and Finance Committee no later than one year following the date of enactment.<br>***Effective date.***--Effective on date of enactment. | |

| *ITEM* | *PRESENT LAW* | *HOUSE BILL* | *SENATE AMENDMENT* |
|---|---|---|---|
| **7. Limit interest deductions for earnings stripping payments to related tax-exempt parties (sec. 11210 of the House bill)** | Interest expenses of a U.S. corporate taxpayer are generally deductible, whether or not the interest is paid to a related party and whether or not the interest income is subject to U.S. taxation as received by the recipient. | Deductions are disallowed for interest paid to related parties that are not subject to U.S. tax on the interest received, generally to the extent that such interest exceeds 50 percent of the payor's pre-interest-deduction taxable income. Interest recipients that are subject to a reduced rate of taxation, e.g. under a tax treaty, are treated as partially subject to U.S. tax and partially not subject to U.S. tax. Disallowed deductions are carried over to subsequent years.<br>***Effective date.***--Generally, for interest paid or accrued after July 10, 1989, in taxable years beginning after that date, except (i) on debt instruments with fixed terms that were outstanding on that date, and (ii) until September 1, 1989, on demand loans that were outstanding on July 10, 1989. | No provision. |
| **8. Exempt from corporate level tax certain distributions made by cooperative housing corporations (sec. 11212(a) of the House bill)** | *a. Distribution of appreciated property by corporations.*--In general, gain is recognized by a corporation if appreciated property is distributed to shareholders in a liquidating or nonliquidating distribution. No gain or loss is recognized to a cooperative housing corporation, however, when property that qualifies as a principal residence is distributed to a tenant-stockholder, to the extent the exchange qualifies for nonrecognition at the shareholder level under section 1034 of the Code (sec. 216(e)).<br>*b. Deductions claimed against non-member income.*--In the case of a taxable membership organization, deductions attributable to furnishing services, insurance, goods, or other items of value to members are allowed only to the extent of income derived from members (sec. 277). The Tax Court has applied this rule in the | *a. Distribution of appreciated property by corporations.*--No gain or loss is recognized to a cooperative housing corporation on the distribution of a dwelling unit to a tenant-stockholder regardless of whether the stockholder is entitled to defer recognition of the gain, if any, on the distribution. The provision does not apply, however, to the distribution of any retail or commercial space by a cooperative housing corporation.<br>*b. Deductions claimed against non-tenant-stockholder income* --If a cooperative housing corporation distributes a dwelling unit to a stockholder, it must recognize ordinary income in an amount equal to any deductions with respect to the distributed dwelling unit claimed against income other than income from | No provision. |

| *ITEM* | *PRESENT LAW* | *HOUSE BILL* | *SENATE AMENDMENT* |
|---|---|---|---|
| | case of a cooperative housing corporation. | tenant-stockholders.<br>***Effective date***.–The provision applies to distributions after September 14, 1989, in taxable years ending after that date. The recapture provision applies with respect to deductions claimed for taxable years beginning after December 31, 1970. | |
| **9. Treatment of safe harbor leases of rural electric cooperatives (sec. 11212(b) of the House bill)** | Membership organizations may not use deductions arising from providing goods and services to members to offset income from nonmembers. In a safe harbor lease, the lessee both receives interest income and has rental expenses. | Provides that interest income and rental expenses of safe harbor leases of rural electric cooperatives are first netted and the difference is then allocated between member and nonmember income.<br>***Effective date***.--All open taxable years. | No provision. |

| *ITEM* | *PRESENT LAW* | *HOUSE BILL* | *SENATE AMENDMENT* |
|---|---|---|---|
| **B. Employee Benefit Provisions** | | | |
| **1. Repeal of section 89 nondiscrimination rules (secs. 11301-11303 of the House bill)** | | | No provision. |
| ***a. Repeal of section 89*** | *a. Section 89.*--Under present law, section 89 imposes nondiscrimination rules on group-term life insurance plans and health plans. Section 89 also imposes minimum qualification standards on certain types of employee benefit plans. | *a. Section 89.*--The House bill repeals section 89.<br>***Effective date.***--The provision is effective as if included in the Tax Reform Act of 1986. | |
| ***b. Reinstatement of prior law*** | *b. Prior law.*--Prior to the enactment of section 89 as part of the Tax Reform Act of 1986, other nondiscrimination rules applied to certain employee benefit plans. Under present law, church plans are exempt from the nondiscrimination rules applicable to group-term life insurance plans. | *b. Prior law.*--The House bill reinstates the nondiscrimination rules in effect prior to the Tax Reform Act of 1986. As under present law, the nondiscrimination rules for group-term life insurance plans do not apply to church plans. A church plan is a plan maintained by a church for church employees, and "church" means a church (as defined in sec. 3121(w)(3)(A)) or a qualified church-controlled organization (as defined in sec. 3121(w)(3)(B)).<br>***Effective date.***--The provision is effective as if included in the Tax Reform Act of 1986. | |
| ***c. Other provisions relating to nontaxable benefits*** | *c. Other provisions.*-- | *c. Other provisions.*-- | |
| *(1) Dependent care assistance plans* | *(1) Dependent care assistance plans.*--Under present law, gross income does not include benefits received under an employer-provided dependent care assistance plan. Dependent care assistance plans are subject to certain nondiscrimination rules, | *(1) Dependent care assistance plans.*--The House bill provides that, if the nondiscrimination rules are not satisfied, only the highly compensated employees in the plan must include in income the value of benefits received under the plan. | |

| *ITEM* | *PRESENT LAW* | *HOUSE BILL* | *SENATE AMENDMENT* |
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|  | including a benefits test. If these rules are not satisfied, then all employees must include in income the benefits received under the plan. | ***Effective date***.--The provision is effective for years beginning after December 31, 1988. |  |
| (2) *Line of business rules* | (2) *Line of business rules*.--Under present law, if an employer has separate lines of business or maintains separate operating units, each separate line of business or operating unit may be tested separately under the nondiscrimination rules applicable to qualified plans by taking into account only those employees in that line of business or operating unit. | (2) *Line of business rules*.--Under the House bill, in the case of any plan year beginning on or before the date the Secretary issues guidelines under section 414(r)(2)(C) (and begins issuing determination letters with respect to such section), an employer meeting the requirements of section 414(r)(2)(A) and (B) with respect to a line of business may treat it as a separate line of business if the employer reasonably determines it to be separate.<br>***Effective date***.--The provision is effective for years beginning after December 31, 1986. |  |
| **2. Provisions relating to employee stock ownership plans (ESOPs) (secs.11311-11314 of the House bill and sec. 6301 of the Senate amendment)** |  |  |  |
| ***a. Partial interest exclusion for ESOP loans*** | *a. Partial interest exclusion for ESOP loans*.--*(1) In general*.--Under present law, banks and certain other financial institutions may exclude from gross income 50 percent of the interest received with respect to a securities acquisition loan. | *a. Partial interest exclusion for ESOP loans*.--*(1) In general*.---Under the House bill, the partial interest exclusion applies with respect to a securities acquisition loan only during periods in which the ESOP owns at least 30 percent of each class of outstanding stock of the corporation that issued the employer securities or 30 percent of the total value of all outstanding stock of the corporation. The Secretary is authorized to provide that limited failures to meet this | *a. Partial interest exclusion for ESOP loans*.--*(1) In general*.----Under the Senate amendment, the partial interest exclusion does not apply to a loan unless (1) immediately after the acquisition of the securities acquired with the loan proceeds (or transfer of securities to the ESOP in the case of an immediate allocation loan) the ESOP owns at least 30 percent of each class of outstanding stock of the corporation issuing the securities, or 30 percent of the total |

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|  |  | 30-percent requirement will not result in loss of the exclusion if the failure is corrected within 90 days. The Secretary may extend the correction period for an additional 90 days. | value of all outstanding stock of the corporation, (2) the term of the loan does not exceed 15 years, and (3) participants are entitled to direct how the employer securities acquired with the loan (or transferred to the ESOP) and allocated to their account are to be voted. The 30-percent limit is calculated as under the House bill except that options held by the ESOP are taken into account in determining the percentage of stock held by the ESOP.<br>Under the amendment, a 10-percent excise tax is imposed on the employer maintaining the ESOP if, within 3 years after the securities are acquired (or transferred) (1) the total number of employer securities held by the ESOP after the disposition is less than the total number of employer securities held after the acquisition (or transfer), or (2) except to the extent provided in regulations, the value of employer securities held by the ESOP after the disposition is less than 30 percent of the total value of all employer securities as of the time of the disposition. The excise tax is also imposed if the employer securities are disposed of before being allocated to the accounts of plan participants. Certain distributions to employees and certain exchanges of employer securities are not taken into account for purposes of the excise tax provisions. |
|  | (2) *Rev. Rul. 89-76.*--Under Revenue Ruling 89-76, a lender may qualify for the partial interest exclusion regardless of whether the original lender was a qualified lender or whether each prior lender was a qualified lender. | (2) *Rev. Rul. 89-76.*--The House bill overrides Revenue Ruling 89-76 by providing that the partial interest exclusion is not available to a lender unless the loan originated with a qualified lender and each prior lender is a qualified lender. | (2) *Rev. Rul. 89-76.*--No provision. |

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|  |  | *Effective date.*-- | *Effective date.*-- |
|  |  | (*1*) *In general.*--The provision generally applies to loans made after July 10, 1989. | (*1*) *In general.*--The provision generally applies to loans made after June 6, 1989. |
|  |  | (*2*) *Binding commitment exception.*--The provision does not apply to any loan made pursuant to a written binding commitment in effect on July 10, 1989, and at all times thereafter before such loan is made to the extent that the proceeds of such loan are used to acquire employer securities pursuant to a written binding contract (or tender offer registered with the Securities and Exchange Commission) in effect on July 10, 1989, and at all times thereafter before such securities are acquired. | (*2*) *Binding commitment exception.*--The provision does not apply to any loan (a) which is made pursuant to a binding written commitment in effect on June 6, 1989, and at all times thereafter before such loan is made, or (b) to the extent that the proceeds of such loan are used to acquire employer securities pursuant to a written binding contract (or tender offer registered with the Securities and Exchange Commission) in effect on June 6, 1989, and at all times thereafter before such securities are acquired. |
|  |  | (*3*) *Immediate allocation loans.*--The provision does not apply to any loan made pursuant to a written agreement entered into on or before July 10, 1989, if such agreement evidences the intent of the borrower on a periodic basis to enter into immediate allocation securities acquisition loans, and one or more securities acquisition loans were made to the borrower on or before July 10, 1989. | (*3*) *Immediate allocation loans.*--No provision. However, such loans may qualify under the general grandfather rules. |
|  |  | (*4*) *Collectively bargained plans.*--No provision. | (*4*) *Collectively bargained plans.*--The provision does not apply to a loan to the extent made to finance the acquisition of employer securities by an ESOP pursuant to a collective bargaining agreement between employee representatives and one or more employers which was agreed to on or before June 6, 1989, and ratified before such date or within a reasonable period thereafter and which agreement sets forth the material terms of the acquisition (which requirement may be met if the agreement sets forth the material terms of the ESOP). |

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|  |  | (5) *Required government filings.*--No provision. | (5) *Required government filings.*--The provision does not apply to loans with respect to which a filing was made with an agency of the United States on or before June 6, 1989, which specifies the aggregate principal amount of the loan if (a) such filing specifies that the loan is intended to be a securities acquisition loan and is for registration required to permit the offering of such loan, or (b) such filing is for approval required in order for the ESOP to acquire more than a certain percentage of the stock of the employer. |
|  |  | (6) *Refinancings.*--The provision does not apply to loans made after July 10, 1989, to refinance securities acquisition loans made on or before such date or to refinance loans described in (2) or (3) above if (a) such loans meet the requirements of sec. 133 (as in effect before the amendments made by the provision) applicable to such loans, (b) immediately after the refinancing the principal amount of the loan resulting from the refinancing does not exceed the principal amount of the refinanced loan (immediately before the refinancing), (c) the term of the loan does not extend beyond the later of (i) the last day of the term of the original securities acquisition loan or (ii) the last day of the 7-year period beginning on the date the original securities acquisition loan was made, and (d) the original loan was originated by a qualified lender. | (6) *Refinancings.*--The provision does not apply to loans made after June 6, 1989, to refinance securities acquisition loans (determined without regard to sec. 133(b)(2)) made on or before such date to refinance loans described in this paragraph or paragraphs (2), (4), and (5) above if (a) the refinancing loans meet the requirements of section 133 (as in effect before amended by the provision), (b) immediately after the refinancing the principal amount of the loan resulting from the refinancing does not exceed the principal amount of the refinanced loan (immediately before the refinancing), and (c) the term of such refinancing loan does not extend beyond the later of (i) the last day of the term of the original securities acquisition loan, or (ii) the last day of the 7-year period beginning on the date the original securities acquisition loan was made. For purposes of this transition rule, "securities acquisition loan" includes a loan from a corporation to an ESOP described in sec. 133(b)(3) (relating to back-to-back loans). |

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| ***b. Dividends paid deduction*** | *b. Dividends paid deduction.*--In certain circumstances, present law permits an employer to deduct dividends paid on securities held by an ESOP to the extent the dividends are (1) paid out currently to plan participants or (2) used to repay a loan used to acquire employer securities. | *b. Dividends paid deduction.*--The 30-percent ownership requirement that applies to the partial interest exclusion under the bill also applies to the dividends paid deduction. In addition, the dividend deduction is limited to dividends paid on employer securities acquired with a securities acquisition loan to which the partial interest exclusion applies. Dividends may be used to repay an acquisition loan only if those dividends are paid with respect to employer securities acquired with that loan.<br>***Effective date.***--The provision applies to employer securities acquired after July 10, 1989, other than securities acquired with the proceeds of a loan made pursuant to a written binding commitment in effect on July 10, 1989, and at all times thereafter before such loan is made. | *b.* No provision. |
| ***c. Deferral of gain on certain sales of stock to an ESOP*** | *c. Deferral of gain on certain sales of stock to an ESOP.*--If certain requirements are satisfied, present law permits a taxpayer to elect to defer recognition of gain on the sale of qualified securities to an ESOP to the extent that the taxpayer reinvests the proceeds in qualified replacement property within a replacement period. | *c. Deferral of gain on certain sales of stock to an ESOP.*--Under the House bill, the deferral of recognition of gain on the sale of qualified securities to an ESOP is available only if, in addition to the present-law requirements, the taxpayer holds the securities for at least 3 years before the sale of stock to an ESOP.<br>***Effective date.***--The provision is effective for sales to an ESOP after July 10, 1989. | *c.* No provision. |
| ***d. Limits on contributions and benefits under an ESOP*** | *d. Limits on contributions and benefits under an ESOP.*--In general, under present law, the maximum annual additions that can be made to the account of plan participants under a defined contribution plan is the lesser of (1) 25 percent of the participant's compensation, or (2) $30,000. If no more than 1/3 of the employer contributions to an ESOP a year are allocated to highly | *d. Limits on contributions and benefits under an ESOP.*--The special dollar limitation for annual additions to an ESOP is repealed. | *d.* No provision. |

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|  | compensated employees, then the dollar limit on annual additions to the ESOP is equal to the sum of (1) the regularly applicable dollar limit, and (2) the lesser of such dollar limit or the amount of employer securities contributed, or purchased with cash contributed to, the ESOP. | ***Effective date***.--The provision is effective for years beginning after December 31, 1989. |  |
| ***e. Payment of estate tax liability by an ESOP*** | *e. Payment of estate tax liability by an ESOP*.--Under present law, the executor of a decedent's estate is relieved of estate tax liability, and an ESOP is required to pay the liability, if qualified employer securities are acquired from the decedent by the ESOP and certain requirements are satisfied. The plan administrator must consent to the assumption of estate tax liability and the employer maintaining the ESOP must guaranty the payment of the liability. | *e. Payment of estate tax liability by an ESOP*.--The House bill repeals the provision permitting an ESOP to assume estate tax liability.<br>***Effective date***.--The provision is effective for estates of decedents dying after July 12, 1989. | *e.* No provision. |
| ***f. Estate tax deduction for sales to an ESOP*** | *f. Estate tax deduction for sales to an ESOP*.--If certain requirements are satisfied, present law permits a deduction from the gross estate equal to 50 percent of the qualified proceeds from a qualified sale to an ESOP of employer securities that are includible in the decedent's estate. The deduction may not exceed 50 percent of the otherwise taxable estate and cannot reduce the estate taxes by more than $750,000. The estate tax deduction expires for sales after December 31, 1991. | *f. Estate tax deduction for sales to an ESOP*.--The House bill repeals the estate tax deduction for certain sales of employer securities to an ESOP.<br>***Effective date***.--The provision is effective for estates of decedents dying after July 12, 1989. | *f.* No provision. |

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| ***g. Relief from net operating loss provisions*** | *g. Relief from net operating loss provisions.*--In general under present law, if there is more than a 50 percent change in the ownership of a corporation that has net operating losses, the use of the corporation's pre-change losses and credits is limited following that membership change. Employer securities acquired by certain ESOPs are not taken into account in determining whether an ownership change has occurred. | *g. Relief from net operating loss provisions.*--The House bill repeals the provision providing that certain employer securities are not taken into account in determining whether an ownership change has occurred for purposes of the net operating loss rules.<br>***Effective date.***--The provision applies to acquisitions of employer securities after July 12, 1989, other than acquisitions pursuant to a binding written contract in effect on July 12, 1989, and at all times thereafter before such acquisition. | *g.* No provision. |
| **3. Modification of full funding limitation (sec. 11657 of the House bill)** | | | No provision. |
| ***a. In general--eligible employers*** | *a. In general*--Under present law, subject to certain limitations, an employer may make deductible contributions to a defined benefit pension plan up to the full funding limitation. The full funding limitation is generally defined as the excess, if any, of (1) the lesser of (a) 150 percent of the plan's current liability or (b) the accrued liability under the plan (including normal cost), over (2) the value of the plan's assets. For plan years beginning before January 1, 1988, the 150 percent of current liability limitation did not apply.<br>The Secretary may, under regulations, adjust the 150-percent figure contained in the full funding limitation to take into account the average age (and length of service, if appropriate) of the participants in the plan (weighted by the value of their benefits under the plan). In addition, the Secretary is authorized to | *a. In general*--Certain employers may elect to apply the present-law full funding limitation without regard to the 150 percent of current liability limitation. The Secretary is directed to adjust the full funding limitation for all plans (other than those subject to such an election) in a specified manner in response to employer elections under the provision so that the provision has a negligible effect on Federal budget receipts.<br>An employer may elect to use the alternative full funding limitation if (1) as of the first day of the plan year in which the election is made the accrued liability of participants accruing benefits under all defined pension benefit plans of the employer (and controlled group members) is at least 90 percent of the aggregate total accrued liability under all such plans; and (2) no defined benefit pension plan maintained by the employer | |

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| | prescribe regulations that apply, in lieu of the 150 percent of current liability limitation, a different full funding limitation based on factors other than current liability. The Secretary may exercise this authority only in a manner so that in the aggregate, the effect on Federal budget receipts is substantially identical to the effect of the 150-percent full funding limitation. | (or by any controlled group member) is a top-heavy plan (within the meaning of section 416(g)). | |
| *b. **Required adjustment by Secretary of full funding limitation*** | | *b. Required adjustment*.--The Secretary is required to adjust the full funding limitation applicable to other defined benefit pension plans on an annual basis in response to the elections.<br>Any adjustment to the full funding limitation is made by substituting, with respect to inactive participants, a percentage between 140 percent and 150 percent for the "150 percent" in the 150-percent full funding limitation.<br>To the extent that additional adjustments are necessary, the full funding limitation is to be adjusted by multiplying the accrued liability of the plan (sec. 412(c)(7)(A)(i)(II)) for all participants in the plan by a percentage less than 100 percent, but in no event by reducing this liability below 140 percent of current liability.<br>***Effective date***. -- The provision is effective as of the date of enactment. | |

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| **4. Transfer of excess pension plan assets to pay current retiree health benefits (sec. 11321 of the House bill)** | | | No provision. |
| ***a. In general*** | *a. In general.*--Under present law, pension plan assets may not revert to an employer prior to the termination of the plan and the satisfaction of all plan liabilities. Any assets that revert to the employer upon such termination are included in the gross income of the employer and are subject to an excise tax (sec. 4980).<br>Subject to certain limitations, an employer may under present law make deductible contributions to a defined benefit pension plan up to the full funding limitation. The full funding limitation is generally defined as the excess, if any, of (1) the lesser of (a) the accrued liability under the plan or (b) 150 percent of the plan's current liability, over (2) the lesser of (a) the fair market value of the plan's assets, or (b) the actuarial value of the plan's assets.<br>Under present law, a pension plan may provide medical benefits to retirees through a section 401(h) account that is part of such plan. The assets of a pension plan may not be transferred to a section 401(h) account without disqualifying the pension plan and subjecting the amounts transferred to income tax and the excise tax. | *a. In general.*--Under the provision, a transfer of certain assets is permitted from the pension portion of a defined benefit pension plan (other than a multiemployer plan) to the section 401(h) account that is a part of such plan.<br>The assets transferred are not includible in the gross income of the employer and are not subject to the excise tax on reversions. The defined benefit pension plan does not fail to satisfy the qualification requirements (sec. 401(a)) solely on account of the transfer and the transfer does not violate the present-law requirement that medical benefits under a section 401(h) account be subordinate to the retirement benefits under the plan. | |
| ***b. Frequency and timing of permissible transfer*** | | *b. Frequency and timing of permissible transfer.*--Only one transfer is permitted and must occur before January 1, 1992, and in a plan year beginning after December 31, 1989. No reimbursement for 1989 expenses is permitted. | |

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| ***c. Requirements with respect to plan benefits*** | | | |
| *(1) Vesting* | | *c. Requirements with respect to plan benefits.*--<br>(1) Vesting of accrued retirement benefits is required as if the plan terminated immediately before the transfer. | |
| *(2) Annuitization* | | (2) Annuities must be purchased for plan participants as if the plan terminated immediately before the transfer. | |
| ***d. Pension plan assets available for transfer*** | | *d. Pension plan assets available for transfer.*--The maximum amount of pension plan assets available for transfer is the lesser of (1) the plan's qualified current retiree health liabilities or (2) the value of assets in excess of the lesser of (a) 140 percent of the plan's current liability, or (b) the accrued liability (including normal cost) under the plan (as determined under sec. 412(c)(7)). | |
| ***e. Qualified current retiree health liabilities*** | | *e. Qualified current retiree health liabilities.*--<br>(1) *In general.*-- Qualified current retiree health liabilities are defined as the amount of retiree health benefits (excluding administrative expenses) estimated to be paid by the employer during the employer's 1990 or 1991 tax year with respect to covered employees who have retired on or before the date of the transfer. Liabilities that were paid by the employer before the date of the transfer may not be reimbursed.<br>(2) *Covered retirees.*--The retired employees who may be covered are not limited to pension plan participants. | |

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| ***f. Treatment of unexpended transferred amounts*** | | *f. Treatment of unexpended transferred amounts.*--Transferred amounts not used for qualified current retiree liabilities are returned to the general assets of the plan and treated as distributed to the employer on the last day of the employer's last taxable year beginning in 1991. Such amounts are includible in the employer's income and subject to the reversion excise tax. Payments of qualified current retiree health benefits are treated as paid first out of income on transferred amounts and then out of transferred amounts. | |
| ***g. Limitations on other contributions*** | | | |
| *(1) In general* | | *g. Limitations on other contributions.*--<br>(1) The employer is not entitled to a deduction for amounts transferred into the section 401(h) account or when such amounts (or income on such amounts) are used to pay retiree health benefits. An employer is not allowed a deduction for 1990 or 1991 for the provision or funding of qualified current retiree health benefits (whether directly, through a section 401(h) account, or a welfare benefit fund) except to the extent that the total of such payments for qualified current retiree health liabilities exceed the amount transferred to the section 401(h) account (including any income thereon) less qualified retiree health liabilities paid from such amounts.<br>In addition, no contribution may be made (whether directly, through a section 401(h) account, or a welfare benefit fund) with respect to qualified current retiree health liabilities that are required to be paid out of transferred assets. | |

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| (2) *Affect on full funding limitation* | | (2) If an employer transfers assets under the provision, then the employer is subject to a modified definition of full funding for the plan year in which the transfer occurs, and for the immediately succeeding 4 plan years. Under this modified definition, the full funding limit with respect to the plan from which the assets were transferred is modified by substituting 140 percent for 150 percent of the plan's current liability.<br>***Effective date***.--The provision applies to plan years beginning after December 31, 1989. | |
| **5. Limitation on contributions to section 401(h) accounts (sec. 11322 of the House bill and sec. 6302 of the Senate amendment)** | Under present law, a defined benefit pension plan may provide medical benefits to retirees through a separate account that is part of the plan (a section 401(h) account). These medical benefits, when added to any life insurance protection provided under the plan, are required to be incidental or subordinate to the retirement benefits provided under the plan. Under Treasury regulations, the medical benefits are considered incidental or subordinate to the retirement benefits if, at all times, the aggregate of employer contributions (made after the date on which the plan first includes such medical benefits) to provide such medical benefits and any life insurance protection does not exceed 25 percent of the aggregate contributions made after such date, other than contributions to fund past service credits. The IRS has taken the position that the 25-percent limitation may be applied based on plan cost rather than actual contributions. | The House bill codifies the 25-percent rule relating to whether retiree medical benefits are incidental or subordinate and requires that this determination be made on the basis of actual contributions to the plan rather than on plan costs.<br>***Effective date***.--The provision is effective for plan years beginning after December 31, 1989. | The Senate amendment is the same as the House bill.<br>***Effective date***.--The provision is effective for contributions after October 3, 1989. |

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| **6. Treatment of lump-sum distributions from certain pension plans (sec. 11656 of the House bill)** | The Tax Reform Act of 1986 amended the rules relating to the taxation of distributions from qualified pension plans. The 1986 Act provided that, in the case of an employee who receives a distribution from a terminated plan which was maintained by Frontier Airlines, the employee may treat a lump sum distribution received from the plan before June 30, 1987, as if it were received in 1986. | The House bill extends the date by which the distribution must be received in order to receive this special treatment from June 30, 1987, to the earlier of (1) the date which is 180 days after the date of the resolution of a declaratory judgment action relating to the plan termination or (2) the date on which the period of limitation expires with respect to the employee's taxable year beginning in 1986.<br>***Effective date***.--The provision is effective upon enactment. | No provision. |

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| C. Foreign Provisions | | | |
| **1. Taxable years of controlled foreign corporations and foreign personal holding companies (sec. 11401 of the House bill and sec. 6401 of the Senate amendment)** | *a. In general.*-- The taxable year of a controlled foreign corporation or a foreign personal holding company is generally its annual accounting period for the purpose of computing its income in keeping its books and records. Generally, neither a controlled foreign corporation nor a foreign personal holding company is required to conform its taxable year to the taxable year of its shareholders who are U.S. persons. | *a. In general.*-- The House bill generally requires the taxable year of a controlled foreign corporation or a foreign personal holding company to be the majority U.S. shareholder year, which is defined as the taxable year of its U.S. shareholders who own a majority of the value of the U.S. owned stock of the corporation and who have identical taxable years. If no group of U.S. shareholders with identical taxable years owns a majority of the U.S. owned stock of the corporation, then the corporation must adopt the required taxable year as the Secretary may prescribe in regulations. | *a. In general.*-- Generally the same as the House bill, except that the provision only applies to a controlled foreign corporation or a foreign personal holding company, more than fifty percent of the total voting power or value of the U.S. owned stock of which is treated as owned by a single U.S. shareholder, and only takes into account the taxable years of such U.S. shareholders (and certain related persons) in determining the majority U.S. shareholder year. Additionally, a controlled foreign corporation that has a majority U.S. shareholder year may elect to use as its taxable year, a taxable year that begins one month earlier than the majority U.S. shareholder year. |
| | *b. Distributions by foreign personal holding companies.*-- A U.S. shareholder of a foreign personal holding company is generally required to include in gross income his or her pro rata share of the company's undistributed foreign personal holding company income for the taxable year. Distributions made by the company subsequent to the close of the taxable year do not reduce the amount of its undistributed foreign personal holding company income for such year. | *b. Distributions by foreign personal holding companies.*-- The House bill allows a foreign personal holding company to treat a distribution that is made on or before the fifteenth day of the third month after the close of its taxable year as having been made during such year, but only to the extent that such distribution would offset its undistributed foreign personal holding company income for such year. The amount of the distribution which is deemed to have been made during the foreign personal holding company's previous taxable year is to be included in the gross income of the recipient U.S. shareholder (generally disregarding any foreign entity which actually holds the stock of the foreign personal holding company) for such U.S. shareholder's taxable year in which the taxable year of the foreign personal holding company ends. | *b. Distributions by foreign personal holding companies.*-- Generally the same as the House bill except that a qualifying distribution by a foreign personal holding company would be included not only in the gross income of the recipient U.S. shareholder, but also in the gross or distributable net income of any foreign entity that actually receives such distribution. |
| | | ***Effective date.***--Effective for taxable years of controlled foreign corporations and foreign | ***Effective date.***--Same as the House bill |

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| | | personal holding companies beginning after July 10, 1989. In the case of a corporation that is required by this provision to change its taxable year for its first taxable year beginning after July 10, 1989, each shareholder that would otherwise be required to include income from more than one taxable year of such corporation in any one of its taxable years would take into account the income for the corporation's short taxable year ratably over a period not to exceed four years, beginning with its taxable year within which the short taxable year of the corporation ends. | |
| **2. Improve information reporting by U.S. subsidiaries and branches of foreign corporations (sec. 11403 of the House bill and sec. 6403 of the Senate amendment)** | Any corporation (U.S. or foreign) that conducts a trade or business in the United States and that is 50-percent owned by a foreign person is required to file an information return reporting all transactions ("reportable transactions") with related foreign persons (sec. 6038A). Relatedness for this purpose is defined as relatedness within the meaning of sections 267(b), 707(b)(1), or 482. Noncompliance with the reporting requirements of section 6038A is sanctioned by an initial penalty of $1000, plus additional $1000 penalties (maximum $24,000) for each 30-day period (after 90 days after IRS notification) that the failure remains outstanding. | *In general.*--The House bill expands present-law reporting requirements, adds new recordkeeping requirements, enhances the enforceability of IRS summonses, and modifies penalties for noncompliance.<br>*Reporting.*--Expands the class of corporations subject to reporting under section 6038A to include corporations 25-percent owned by 10-percent foreign shareholders. Expands the class of persons treated as related (whose transactions are therefore reportable) to include 10-percent foreign shareholders.<br>*Recordkeeping.*--To the extent provided in regulations, records of a foreign related person that pertain to reportable transactions are required to be kept in the United States.<br>*Summonses.*--A related foreign person is generally required to designate the U.S. person as its agent to receive IRS summonses in connection with reportable transactions. Opportunity is provided for the taxpayer to initiate a challenge to such a summons in court. | *In general.*--Same as the House bill, with exceptions noted below.<br>*Reporting.*--Expands the class of corporations subject to reporting under section 6038A to include corporations *with at least one 25-percent foreign shareholder*. Expands the class of persons treated as related (whose transactions are therefore reportable) to include *25-percent* foreign shareholders.<br>*Recordkeeping.*--Same as the House bill, except the Amendment clarifies that the Secretary may authorize required records to be maintained outside the United States as an alternative to U.S record maintenance.<br>*Summonses.*--Same as the House bill, except that it clarifies that such agency is intended to apply only for the purposes of IRS summonses, not for any other purpose under Federal or State laws. |

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|  |  | *Sanctions*.--(1) The existing $1000 penalty is increased to $10,000 and each addition to that penalty is increased to $10,000 (with no maximum). (2) For failure to designate a U.S. agent to accept service of process, or for failure to comply with a summons pertaining to a reportable transaction, the IRS is authorized to (i) disallow all deductions for payments to the related party and (ii) treat as zero the cost of goods sold of any property acquired from the related party or transferred to the related party, in connection with any reportable transaction.<br>***Effective date***.--Taxable years of reporting corporations beginning after July 10, 1989. | *Sanctions*.--Same as the House bill, except that for failure to designate a U.S. agent to accept service of process, or for failure to comply with a summons pertaining to a reportable transaction, the IRS is authorized to allow deductions and cost of goods sold only as it may determine, in its sole discretion, from its own knowledge or from such information as it may obtain through testimony or otherwise. Also clarifies that this sanction applies to the failure to comply with an IRS summons as a result of a failure to maintain required records.<br>***Effective date***.--Same as the House bill. |
| **3. Taxation of certain stock gains of foreign persons (sec. 11404 of the House bill)** | Under the Code, foreign persons are generally not subject to U.S. tax on gain realized on the disposition of stock in a U.S. corporation (other than a U.S. real property holding corporation), unless the gain is effectively connected with the conduct of a trade or business in the United States. In addition, many U.S. income tax treaties contain provisions to preclude the imposition of U.S. tax on such gains realized by treaty-country residents. | Where a nonresident alien individual or foreign corporation is a 10-percent shareholder in a U.S. corporation, the House bill generally treats gain or loss of the foreign person from the disposition of any stock in the U.S. corporation as effectively connected with the conduct of a trade or business within the United States. In order to be a 10-percent shareholder, the foreign person must have owned (either directly or under attribution rules) more than 10 percent of the stock of the domestic corporation at some time during the prior 5-year period. The provision applies notwithstanding any nonrecognition provision, unless the Treasury provides that nonrecognition treatment applies. Withholding, at the rate of 10 percent of the amount realized, is imposed on proceeds of transactions subject to the tax.<br>***Effective date***.--Generally applies to dispositions after December 31, 1989 unless pursuant to a written binding contract in effect on | No provision. |

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| | | July 10, 1989 and at all times thereafter before the disposition. Withholding shall not apply to any disposition before 6 months after date of enactment. In the case of gains protected by treaty and in the case of gains of certain qualified residents of countries with which the U.S. has a comprehensive income tax treaty, the provision does not apply until July 11, 1992. Beginning on that date, the provision overrides any contrary treaty provision in effect on date of enactment. | |
| **4. Repeal of transition rule for certain high withholding tax interest (sec. 11405 of the House bill)** | Generally for taxable years beginning after December 31, 1986, interest income (other than export financing interest) subject to a foreign withholding tax or other gross basis tax of 5 percent or more is designated "high withholding tax interest" and subject to its own separate foreign tax credit limitation. A special transition rule applies, however, to certain interest on certain loans outstanding prior to or as of the close of the first taxable year of the taxpayer beginning after December 31, 1988, to any of 33 foreign countries (the "Baker 33") or to any resident of one of those countries for use in that country. The transition rule applies to taxable years beginning with the first taxable year beginning after December 31, 1986 and ending with the fourth taxable year beginning after December 31, 1989. | Repeals the special transition rule for application of the separate foreign tax credit limitation with respect to high withholding tax interest received on loans involving the Baker 33 countries.<br>***Effective date.***--Taxable years beginning after December 31, 1989. | No provision. |
| **5. Capitalization of foreign research and experimental expenditures (sec. 11406 of the House bill)** | Generally, a taxpayer is permitted to elect to deduct currently the amount of research and experimental expenditures incurred in connection with its trade or business. Alternatively, a taxpayer may elect to treat such expenses as deferred expenses and deduct them over a period of not less than five years on a straight-line | Expenditures for research conducted outside of the United States in connection with the taxpayer's trade or business that are otherwise chargeable to capital account may not be expensed, but rather must be capitalized and deducted over a period of not less than five years. The deduction of such costs commences | No provision. |

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|  | basis, provided that such expenses are chargeable to capital account, but not chargeable to property of a character subject to an allowance for depreciation or depletion. | with the month in which the costs are paid or incurred.<br>*Effective date.*– Effective for amounts paid or incurred in taxable years beginning after December 31, 1989. |  |
| **6. Allocation of interest expense in the case of certain affiliated groups (sec. 11407 of the House bill)** | Generally an affiliated group is treated as if all members of the group were one taxpayer for purposes of allocating and apportioning interest expense. The term "affiliated group" does not include foreign corporations for this purpose. | Allows certain financial services groups to take into account the interest expenses and assets of foreign subsidiaries for purposes of allocating and apportioning interest expenses between gross income from U.S. and foreign sources. In order to be eligible to use the rule, 90 percent or more of the activities of both the affiliated group and an expanded affiliated group must consist of the active conduct or a banking, insurance, financing, or similar business, and less than 50 percent of the activities of each group must consist of activities of an insurance business or activities of a bank or other financial institution described in section 864(e)(5)(C).<br>*Effective date.*--Taxable years beginning after December 31, 1989. | No provision. |
| **7. Treat certain foreign corporate dividends and deemed income inclusions as unrelated business taxable income (sec. 11408 of the House bill)** | Unrelated business activities conducted by tax-exempt organizations are generally subject to one level of U.S. corporate tax, regardless of whether the activities are conducted directly by the tax-exempt itself or indirectly by a taxable domestic subsidiary. However, earnings from unrelated business activities conducted by a foreign subsidiary generally are not subject to current U.S. taxation and are exempt from U.S. tax when distributed to (or deemed received by) the tax-exempt. | Dividends received by 10-percent shareholders from foreign corporations (and amounts deemed received under subpart F) are treated as unrelated business taxable income (UBTI) generally to the extent that the earnings and profits (or the subpart F income) of the foreign corporation would be treated as UBTI if received directly by the domestic tax-exempt.<br>*Effective date.*–Distributions of earnings and profits that are generated in taxable years of | No provision. |

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|  |  | foreign corporations beginning after December 31, 1989, and deemed income inclusions under subpart F in respect of taxable years of foreign corporations beginning after December 31, 1989. |  |
| **8. Exclusion for certain overseas allowances received by certain Defense Department personnel (sec. 11649 of the House bill)** | Civilian officers and employees of the State Department and Central Intelligence Agency (CIA) are exempt from tax on certain benefits received as allowances or otherwise (but not amounts received as post differentials) related to their overseas assignments. Comparable benefits may be received by civilian Defense Department employees assigned to Defense Attache Offices and Defense Intelligence Agency Liaison Offices, or to special cryptologic activities, outside the United States. The Code does not provide a tax exemption for these amounts received by Defense Department employees. | Provides for exemption from tax of allowances and other items, comparable to those provided to State Department and CIA civilian employees, provided to civilian Defense Department employees assigned to Defense Attache Offices and Defense Intelligence Agency Liaison Offices, or to special cryptologic activities, outside the United States.<br>*Effective date*.--Allowances received after December 31, 1988, in taxable years ending after that date. | No provision. |

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| D. Excise Tax Provisions | | | |
| 1. Aviation excise taxes | | | |
| ***a. Suspension of automatic reduction in Airport and Airway Trust Fund taxes (sec. 11502 of House bill and sec. 6501 of Senate amendment)*** | *a. Suspend automatic tax reduction*<br>The excise taxes (except the international air passenger departure tax) which are dedicated to the Airport and Airway Trust Fund are scheduled to be reduced by 50 percent on January 1, 1990, because appropriations for trust fund expenditures for airport improvement, air navigational facilities and equipment, and research, engineering and development were less than 85 percent of authorized amounts for fiscal years 1988 and 1989.<br>The excise tax rates that would be halved by the automatic reduction are (1) the 8 percent passenger tax, (2) the 5 percent air freight tax, and (3) the noncommercial aviation fuels taxes, i.e., 12 cents per gallon gasoline and 14 cents per gallon jet fuels. | *a. Suspend automatic tax reduction*<br>The tax rate reduction trigger is suspended for one year, deferring its first possible effective date until January 1, 1991, instead of January 1, 1990.<br>The trigger will be activated on January 1, 1991, if appropriations for the applicable trust fund expenditures for fiscal years 1989 and 1990 are less than 85 percent of the amounts authorized for those fiscal years.<br>The tax rate reductions under the trigger are the same as in present law.<br>***Effective date***.--The suspension is effective on January 1, 1990. | *a. Suspend automatic tax reduction*<br>The tax rate reduction trigger is deferred until October 1, 1990.<br>The trigger will be activated on October 1, 1990, if appropriations for applicable trust fund expenditures for fiscal years 1989 and 1990 are less than 85 percent of the amounts authorized for those fiscal years.<br>The tax rate reductions under the trigger are the same as in present law.<br>***Effective date***.--Same as House bill. |
| ***b. Modification of collection period for the air passenger ticket tax (sec. 11504 of House bill)*** | *b. Collection of air passenger tax*<br>The air passenger tax is billed to the customer in a semi-monthly period and is considered to be collected from the customer during the second following semi-monthly period. The tax must be deposited in a Federal Reserve Bank or other authorized depositary within 3 banking days after the end of the semi-monthly period for which the tax is considered collected. | *b. Collection of air passenger tax*<br>The air passenger tax is considered to be collected during the first week of the second following semi-monthly period. The tax is required to be deposited within 3 banking days after the end of the week for which such tax is considered to be collected.<br>***Effective date***.--The amendment to the Code applies to taxes considered collected for semi-monthly periods beginning after June 30, 1990. | *b. Collection of air passenger tax*<br>No provision. |

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| ***c. Increase in international air passenger departure tax (sec. 6502 of Senate amendment)*** | *c. International departure tax*<br>The international air passenger departure tax is $3 per passenger, and it is imposed when the air transportation is purchased. Revenue from this tax is deposited in the Airport and Airway Trust Fund. The tax expires after December 31, 1990. | *c. International departure tax*<br>No provision. | *c. International departure tax*<br>The departure tax on international air passenger transportation is increased by $3 per passenger to $6 per passenger.<br>***Effective date***.--The increase applies to transportation beginning after December 31, 1989. |
| ***d. International air passenger departure fee (sec. 302(a) of Senate amendment)*** | *d. International departure fee*<br>There is no charge imposed by the United States on international air passenger departures, other than the $3 per passenger international departure tax which is described above in paragraph c. | *d. International departure fee*<br>No provision. | *d. International departure fee*<br>An amendment by the Commerce, Science, and Transportation Committee would impose a $3 international departure fee for each passenger on commercial aircraft departing the United States on international flights during fiscal year 1990. This fee would be imposed in addition to the current $3 per passenger international departure tax, and as a result, the total charge per passenger for international departures would be $6.<br>Amounts received from the fee would be deposited in the general fund of the Treasury as offsetting receipts of the Department of Transportation and ascribed to activities of the Department of Transportation which relate to international air passenger operations.<br>The fee would be imposed as of October 1, 1989. The Secretary of Transportation is to prescribe implementing regulations no later than 60 days after the date of enactment.<br>***Effective date***.--The additional fee applies to international air passenger transportation after September 30, 1989, during fiscal year 1990. |

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| **2. International departure tax/fee on ship passengers** | | | |
| ***a. Departure tax (sec. 6503 of Senate amendment)*** | *a. Departure tax*<br>There are no Federal taxes or fees currently imposed as a departure tax on cruise or other ship passengers. Vessels which use U.S. harbors are taxed at .04 percent on the value of commercial cargo and passenger fares, and the revenues are deposited in the Harbor Maintenance Trust Fund.<br>Under special rules, no harbor maintenance tax applies to cruise ships loading or unloading with respect to cruises to or from Alaska, Hawaii, or a U.S. possession, unless the Alaska, Hawaii, or U.S. possession port is only a stopover to a foreign destination. | *a. Departure tax*<br>No provision. | *a. Departure tax*<br>The Senate amendment imposes a tax of $3 per passenger excise tax on a voyage on a commercial passenger vessel having berth or stateroom accommodations for more than 16 passengers that embarks from a United States port on a voyage that extends over one or more nights. The tax also is imposed on a vessel transporting passengers engaged in gambling aboard the vessel beyond the territorial sea of the United States. The tax is assessed only once for each passenger on a covered voyage, either on initial embarkation or disembarkation in the United States.<br>The tax is not imposed on a vessel on a voyage of less than 12 hours between two points in the United States, or a vessel owned and operated by a State or a political subdivision of a State.<br>Revenues from this tax would be deposited in the general fund.<br>***Effective date.***–The provision is effective on January 1, 1990. |
| ***b. Departure fee (sec. 302(b)) of Senate amendment)*** | *b. Departure fee*<br>There are no Federal taxes or fees currently imposed as a departure tax on cruise or other ship passengers. (See a., above, concerning Harbor Maintenance Trust Fund and tax.) | *b. Departure fee*<br>No provision. | *b. Departure fee*<br>An amendment by the Commerce, Science, and Transportation Committee requires the Secretary of Transportation to impose a fee of $3 per passenger during fiscal year 1990 for each voyage on a passenger vessel having berth or stateroom accommodations for more than 16 passengers that embarks from a United States port on a voyage that extends over one or more |

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|  |  |  | nights. The fee also is imposed on a vessel transporting passengers engaged in gambling aboard the vessel beyond the territorial sea of the United States. The fee is assessed only once for each passenger on a covered voyage, either on initial embarkation or disembarkation in the United States.<br>Two-thirds of the revenues are to be deposited as offsetting receipts into the Harbor Maintenance Trust Fund, and one-third of the revenues are to be deposited into the general fund as offsetting receipts of Coast Guard operations. The passenger fees collected by a vessel with respect to its passengers is to be reduced by amounts equal to payments of the Harbor Maintenance Trust Fund tax and vehicle inspection fees charged by the Coast Guard.<br>*Effective date.*--The fee is to be imposed as of October 1, 1989. The Secretary of Transportation is instructed to issue regulations to implement this fee within 60 days of enactment. |

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| **3. Petroleum excise tax for Oil Spill Liability Trust Fund (sec. 11503 of the House bill and sec. 6504 of the Senate amendment)** | The Code establishes an excise tax of 1.3 cents per barrel on domestic crude oil and imported petroleum products for funding the Oil Spill Liability Trust Fund. The tax has not been imposed because qualified legislation authorizing expenditures for the Trust Fund has not yet been enacted. The tax expires on December 31, 1991, or earlier if $300 million will have been credited to the Trust Fund before January 1, 1992. | The House bill modifies present law to impose the petroleum excise tax at a rate of 3 cents per barrel and to commence collection of the tax without waiting for qualified authorizing legislation.<br><br>***Effective date***.--Effective for domestic crude oil received at a refinery and with respect to imported crude oil and imported petroleum products entering into the United States on or after October 1, 1989. | The Senate amendment is the same as the House bill, except that the Senate amendment provides that for the purposes of making amounts available qualified authorizing legislation includes S. 686, "The Oil Pollution Liability and Compensation Act of 1989," as passed by the Senate on August 4, 1989.<br><br>***Effective date***.--Effective for domestic crude oil received at a refinery and with respect to imported crude oil and imported petroleum products entering into the United States on of after January 1, 1990. |
| **4. Excise tax/fee on ozone-depleting chemicals (sec. 11506 of the House bill and secs. 6507 and 4001 through 4013 of the Senate amendment)** | The use or manufacture of chemicals which deplete the earth's ozone layer is not subject to specific Federal taxes or fees. | *a. In general.*--The House bill assesses an excise tax on the sale or use by a producer, manufacturer, or importer of certain ozone-depleting chemicals. The amount of tax is determined by multiplying a base tax amount by an "ozone-depleting factor." | *a. In general.*--The Senate amendment contains two provisions pertaining to the taxation of ozone-depleting chemicals: one reported by the Committee on Finance and the other reported by the Committee on the Environment and Public Works.<br><br>The Finance Committee provision is generally the same as the House bill.<br><br>The Environment and Public Works Committee provision imposes a fee on the production, importation or distribution of ozone-depleting chemicals. The fee does not depend upon the ozone-depleting factor of the chemical. The fee is generally related to profits earned on the production of such chemicals. |

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| | | *b. Chemicals subject to tax.*–The specific chemicals subject to tax are CFC-11, CFC-12, CFC-113, CFC-114, CFC-115, Halon-1201, Halon-1301, and Halon-2402. | *b. Chemicals subject to tax.*--The Finance Committee provision is identical to the House bill.<br>The Environment and Public Works Committee provision is the same as the House bill. In addition, the Environment and Public Works provision permits the Administrator of the Environmental Protection Agency to add chemicals to the list of chemicals subject to the fee. |
| | | *c. Base tax amount.*--For calendar years 1990 and 1991, the base tax amount is $1.10 per pound of ozone-depleting chemical; for 1992 the base tax amount is $1.60 per pound; and for 1993 and beyond, the base tax amount is $3.10 per pound. The base tax amount is indexed for inflation occurring after 1989. | *c. Base tax amount or fee.*–The Finance Committee provision imposes a base tax amount which is similar to the House bill. For calendar year 1990 the base tax amount is $1.07 per pound of ozone-depleting chemical; for 1991, the base tax amount is $1.12 per pound; for 1993, the base tax amount is $1.67 per pound; for 1994 and beyond, the base tax amount is $3.15. The base tax amount is not indexed for inflation.<br>The Environment and Public Works Committee provision imposes a fee. The fee is the greater of 60 cents per pound of taxed chemical or an amount equal to the profits earned on the sale of the chemical to the extent such profits exceed the profits earned on the sale of such chemical in 1987. The Administrator of the EPA determines the excess profit amount by comparing total revenues generated from the sale of taxed chemicals to an allowance for revenues generated from like sales in 1987. An offset for Federal and State income tax liability is permitted. Distributors of taxed chemicals are granted an additional exemption of 60 cents per pound from the excess profits tax. |

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| | | *d. Ozone-depleting factors.*--The ozone-depleting factors for the chemicals subject to tax are those specified in the Montreal protocol. | *d. Ozone-depleting factors.*--The Finance Committee provision is identical to the House bill.<br>The Environment and Public Works Committee provision does not provide for an ozone-depleting factor. |
| | | *e. Exemptions and reduced rates of tax.*--The House bill provides exemptions for feedstock chemicals, recycled chemicals, and chemicals exported subject to Environmental Protection Agency regulations.<br>The House bill also exempts from tax in 1990 CFCs used in the production of rigid foam insulation and all halons.<br>The House bill provides for a reduced rate of tax in 1991 through 1993 for CFCs used in the production of rigid foam insulation and all halons. | *e. Exemptions and reduced rates of tax.*--The Finance Committee provision is identical to the House bill.<br>The Environment and Public Works Committee provision is the same as the House bill with respect to exports and feedstock chemicals. |
| | | *f. Imports.*--The House bill applies the tax to any ozone-depleting chemical which is imported into the United States and to any product or substance imported into the United States in which a taxable ozone-depleting chemical was used in the manufacture or production. | *f. Imports.*--The Finance Committee provision is identical to the House bill.<br>The Environment and Public Works Committee provision imposes the fee on importation of taxed chemicals, but not on derivative products. |
| | | *g. Trust fund.*--No provision. | *g. Trust fund.*--The Finance Committee provision does not establish a trust fund.<br>The Environment and Public Works Committee provision establishes within the Treasury an "Ozone Layer and Climate Protection Trust Fund." Fees collected are to be deposited in the trust fund. The proceeds of the |

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| | | | fund are to be invested in interest-bearing obligations of the United States. Trust fund expenditure purposes include implementation of the Montreal protocol, research and development activities of the EPA, and to carry out the abatement and control activities of the EPA. |
| | | ***Effective date***.--Effective for ozone-depleting chemicals sold or used after December 31, 1989. In addition, a floor stocks tax is imposed on ozone-depleting chemicals held by a person other than the manufacturer or importer on January 1, 1990. A floor stocks tax is also imposed on each subsequent change in the tax rate for any taxable chemical. The initial deposits of taxes due need not be made until April 1, 1990. | ***Effective date***.--The Finance Committee provision is identical to the House bill.<br>The Environment and Public Works Committee provision is effective July 1, 1989, for chlorofluorocarbons, and is effective January 1, 1992, for halons. The Administrator of the EPA may, by regulation, change the effective dates. |

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| **5. Telephone excise tax (secs. 11504 and 11505 of the House bill)** | | | |
| ***a. Extension of tax*** | *a. Extension of tax.*--A 3-percent excise tax is imposed on local and toll telephone service. The tax is scheduled to expire after December 31, 1990. | *a. Extension of tax.*--The 3-percent telephone excise tax is permanently extended. | *a. Extension of tax.*--No provision. |
| ***b. Collection of tax*** | *b. Collection of tax.*--Tax billed to the customer in a semi-monthly period is considered to be collected during the second following semi-monthly period. The tax must be deposited within 3 banking days after the end of the semi-monthly period for which the tax is considered collected. | *b. Collection of tax.*--The tax for a semi-monthly period is considered collected during the first week of the second following semi-monthly period. Deposit is required within 3 banking days after the end of the week for which the tax is considered to be collected. | *b. Collection of tax.*--No provision. |
| ***c. Exemption certificates*** | *c Exemption certificates.*--Those claiming exemption from the telephone excise tax generally must file annual exemption certificates. | *c Exemption certificates.*--Communications service recipients exempt from the tax by reason of being a qualified international organization, nonprofit hospital, nonprofit educational organization, or a State or local government are relieved of filing a certificate of exemption annually after filing an initial certificate of exemption.<br>***Effective date.***--Extension of tax is effective on January 1, 1991. Modification of the collection date is effective for taxes considered collected for semi-monthly periods beginning after June 30, 1990. The change in filing exemption certificates is effective for any claim for exemption made after the date of enactment. | *c. Exemption certificates.*--No provision. |

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| **6. Collection of gasoline excise tax**<br>***a. Impose gasoline excise tax on arrival at terminal (sec. 11501 of House bill)*** | The gasoline excise tax is 9.1 cents per gallon; 9.0 cents of which are deposited in the Highway Trust Fund, and 0.1 cent is deposited in the Leaking Underground Storage Tank Trust Fund.<br>The gasoline excise tax is imposed on the removal or the sale of gasoline by the refiner, importer, or the terminal operator. The bulk transfer of gasoline to a terminal by a refiner or importer is not considered a removal or sale of gasoline by the refiner or importer. Under proposed regulations, the tax is not imposed until the earlier of (1) a change of title within the terminal pursuant to a nonqualified sale, or (2) removal from the terminal in a transfer which is not by pipeline or marine vessel. The owner of the gasoline immediately before the sale is liable for the tax.<br>Persons subject to the gasoline and diesel fuel taxes are required to register with the Secretary before they incur any tax liability. The Secretary also may require such registrants to post bond. A terminal operator or gasohol blender (and any other registered taxpayer) must furnish a bond as a condition of registration, unless the district director determines that no bond is required on the basis of the registrant's tax history. For terminal operators and gasohol blenders, the amount of bond is the lesser of $1 million or the amount of tax that would be imposed on the expected gasoline flow through the registrant's facilities during an average one-month period. | *Tax imposed at terminal.*--The gasoline excise tax is imposed on receipt of gasoline at any terminal, or its earlier removal or sale by a refiner or importer in a manner other than a bulk transfer to a registered terminal. The owner of the terminal is primarily liable for the tax. The owner of the gasoline when it arrives at the terminal is secondarily liable for the tax. Any gasoline tax paid on gasoline previously subject to tax may be refunded or allowed as a credit against gasoline tax liabilities.<br>*Gasohol blenders.*--The seller of gasoline to a gasohol blender is treated as the person who paid the gasoline tax, and may apply for a refund of the amount of previously paid tax that exceeds the gasohol rate. Refund claims of $200 or more may be filed weekly, and interest is to be paid at the overpayment rate on refund claims for the period beginning on the date the claim is filed through the date the refund is paid.<br>*Registration requirements.*--Each person who is a refiner or importer of gasoline, a terminal owner, or a gasoline blender is required to register with the Secretary, according to procedures described in regulations prescribed by the Secretary.<br>The Secretary is authorized to publish the name and registration number of each registrant and the address of each terminal owned by a registrant who is subject to this tax.<br>The Secretary is permitted to require as a condition of registration that a registrant furnish | No provision. |

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|  |  | an appropriate bond and agree to the imposition of a lien on the registrant's property used in the trade or business subject to registration. The Secretary shall release a lien in connection with a transfer of the property, if a bond in an appropriate amount is furnished.<br>*Floor stocks tax.*--Gasoline removed from the refiner or importer in a bulk transfer before October 1, 1989, and on which no tax was imposed before then, is subject to a floor stocks tax.<br>***Effective date.***--Applies to gasoline removed by the refiner or importer after September 30, 1989.<br>The floor stocks tax and the refund procedure for gasohol blenders are effective on October 1, 1989. |  |
| ***b. Acceleration of gasoline excise tax deposits (sec. 6506 of Senate amendment)*** | Deposits of gasoline excise tax liability are made monthly or semi-monthly, depending on the amount of tax to be deposited.<br>Taxpayers must make monthly deposits of tax for any month in which they are liable for more than $100 of taxes, and the monthly deposits are due by the last day of the following month. Taxpayers liable for more than $2,000 of excise taxes for any month of a calendar quarter must make semi-monthly deposits in the following quarter 9 days after the end of a semi-monthly period which ends on the 15th or last day of a month. Taxpayers who deposit taxes by electronic wire transfer to a government depositary have until 14 days after the end of a semi-monthly period to make the transfer. | No provision. | Taxpayers which have more than $100 of gasoline excise tax liability in any month of a calendar quarter are required to deposit taxes four times in a month.<br>Nine day and 14 day depositors will make tax deposits at those same intervals after the end of the tax period, but there will be four tax periods in each month, which will end on the 7th, 14th, 21st, and last days of the month. Nine day taxpayers will deposit tax liabilities, with respect to the weekly tax periods on the 16th, 23rd, 30th days, respectively, of the same month and on the 9th day of the succeeding month. Fourteen day taxpayers will make their deposits on the 21st and 28th days, respectively, of the of the current month and on the 7th and 14th days of the succeeding month. |

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| | | | In the event that a due date falls on a Saturday, Sunday, or holiday in the District of Columbia, the due date shall be the immediately preceding day which is not a Saturday, Sunday, or holiday. In September 1990, the due date for the third tax period of the month for 9 day taxpayers and the due date for the second tax period of the month for 14 day taxpayers will be September 27, 1990.<br>***Effective date***.--Effective for tax payments for tax periods beginning after December 31, 1989. |
| 7. **Eliminate excise tax on inactivated polio vaccines (sec. 11507(a) of the House bill)** | An excise tax is imposed on the sale of certain vaccines. The tax rate on polio vaccine, which includes inactivated polio vaccine, is 29 cents per dose.<br>The net revenues from the excise tax are deposited into the Vaccine Injury Compensation Trust Fund. The National Vaccine Injury Compensation program uses the fund to pay compensation for vaccine-related injuries and deaths. | At the time that vaccine-related injury and death resulting from inactivated polio vaccine are no longer eligible for compensation through the National Vaccine Injury Compensation program, such vaccine will no longer be subject to excise tax.<br>***Effective date***.--Date of enactment. | No provision. |

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| **8. Modify taxation of bulk cigar imports (sec. 11508 of House bill)** | The Omnibus Budget Reconciliation Act of 1986 modified the provisions in the Internal Revenue Code relating to payment of the excise tax on imported distilled spirits and tobacco products, including bulk cigars. Prior to the 1986 change, cigars imported in bulk could be transferred in bond (without imposition of the tax) to a manufacturer's premises for repacking into consumer packages. Inadvertently, this type of "transfer in bond" was deleted from the Code. As a result, packaging bulk cigars into containers appropriate for sale to consumers has been halted, and bulk cigar imports virtually have ceased. | The excise tax on imported bulk cigars is imposed on shipment of cigars after repackaging appropriate for consumer sales. Imposition of the tax at this point allows transfer of bulk cigars under bond from a foreign trade zone to an importer's business site where repackaging occurs.<br>*Effective date*.--Date of enactment. | No provision. |

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| **E. Limitations on Like-Kind Exchanges (sec. 11601 of the House bill and sec. 6601 of the Senate amendment)** | *a. Property eligible for tax-free exchanges.*--No gain or loss is recognized if property held for productive use in a trade or business or for investment is exchanged solely for property of a "like-kind" which is to be held either for productive use in a trade or business or for investment (sec. 1031). The like-kind standard contrasts with the standard under section 1033 providing for nonrecognition of gain upon certain involuntary conversions. Other than upon a condemnation of real estate (to which the like-kind standard applies under section 1033(g)), section 1033 permits nonrecognition of gain only if the taxpayer acquires replacement property that is "similar or related in service or use" to the converted property. This standard is significantly narrower than the like-kind standard. For example, unimproved and improved real estate generally are not considered similar or related in service or use. | *a. Eligible property.*--<br>(1) General rule.--In order to qualify for nonrecognition treatment under sections 1031 or 1033(g), the properties involved must be similar or related in service or use.<br>(2) Foreign real property.--Foreign real property will be treated as not similar or related in service or use to U.S. real property for purposes of sections 1031 and 1033. | *a. Eligible property*<br>(1) General rule.--No provision.<br>(2) Foreign real property.--No provision. |
| | *b. Related party exchanges.*--If related parties engage in a like-kind exchange, tax basis is shifted between properties, which may result in the reduction of tax upon the subsequent disposition of a property. There are no rules under present law with respect to these type of transactions. | *b. Related party exchanges.*--If a taxpayer directly or indirectly exchanges property with a related party in a section 1031 exchange, and within 2 years either the related party or the taxpayer disposes of the property, the original exchange will not qualify for nonrecognition under section 1031. The committee report provides that a disposition generally includes tax-free transfers. However, dispositions due to death, involuntary conversion, or non-tax avoidance generally are disregarded. | *b. Related party exchanges.*--Same as the House bill, except that the committee report provides that the non-tax avoidance exception generally will apply to (i) transactions involving certain exchanges of undivided interests, (ii) dispositions in tax-free transactions, and (iii) transactions that do not involve the shifting of basis between properties. |
| | *c. Holding period requirements.*--In order to qualify for nonrecognition treatment under section 1031, both the property exchanged and the property received must be held either for use in a trade or business or for investment. In *Bolker* v. *Commissioner*, the Ninth Circuit held | *c. Holding period requirements.*--The property that is relinquished must have been directly held by the taxpayer at all times during the one-year period ending on the date of the exchange, and the property that is received must be directly held by the taxpayer at all times | *c. Holding period requirements.*--No provision. |

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|  | that these holding requirements were met where the taxpayer received property in the liquidation of a corporation and exchanged it shortly thereafter for like-kind property. In Rev. Rul. 77-337, however, the IRS reached a contrary conclusion under similar facts. | during the one-year period immediately after the exchange.<br>***Effective date.***–The provision applies to transfers after July 10, 1989, other than transfers pursuant to a written, binding contract in effect on that date and at all times thereafter before the transfer. | *Effective date.*–Same as the House bill. |

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| **F. Accounting Provisions** | | | |
| **1. Repeal of the completed contract method of accounting for long-term contracts (sec. 11621 of the House bill)** | Taxpayers engaged in the production of property under a long-term contract generally must compute income from the contract under either the percentage of completion method or the percentage of completion-capitalized cost method. Under the percentage of completion-capitalized cost method, 90 percent of the items under the contract are reported under the percentage of completion method and the remaining 10 percent of the items are reported under the taxpayer's normal method of accounting (e.g., the completed contract method, under which income is reported in the year that the contract is completed). Generally, under the percentage of completion method, income is reported under the contract as contract costs are incurred.<br>Exceptions to the required use of the percentage of completion-capitalized cost method and the 90/10 requirement are provided for certain construction contracts of small businesses, certain residential construction contracts and certain ship construction contracts. | The percentage of completion-capitalized cost method of accounting for long-term contracts is repealed.<br>The present-law special rules and exceptions for certain construction contracts of small businesses, certain residential construction contracts and certain ship construction contracts are retained.<br>***Effective date.***–Contracts entered into on or after July 10, 1989. The provision, however, does not apply to any contract that is entered into pursuant to an irrevocable written bid or proposal that was submitted before July 10, 1989. | No provision. |
| **2. Treatment of franchises, trademarks, and trade names (sec. 11622 of the House bill and sec. 6621 of the Senate amendment)** | A taxpayer that purchases an intangible asset is generally allowed a deduction for the purchase price over a period no shorter than the useful life of the asset.<br>In the case of certain payments made on account of the transfer of a franchise, trademark, or trade name, special rules apply. For example, in the case of a single payment made in discharge of a fixed-sum amount where the transferor is required to treat the payment as ordinary income | The House bill repeals the special treatment accorded payments in discharge of a fixed-sum amount that are made on account of the transfer of a franchise, trademark, or trade name, where the fixed-sum amount exceeds $100,000. In addition, contingent payments are not allowed as a deduction for the taxable year in which paid or incurred unless (1) the payments are made at least annually throughout the period that the use of the franchise, trademark, or trade name will occur, and (2) the payments are substantially | Same as the House bill, except that a taxpayer may elect to amortize certain fixed-sum payments and contingent payments that are chargeable to capital account and that are part of the same transaction (or series of related transactions) over a 20-year period that begins with the taxable year in which the transfer occurs. |

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|  | rather than as capital gain, the payment by the transferee is deductible ratably over a period of no more than 10 taxable years. In addition, any amount that is contingent on the productivity, use, or disposition of the franchise, trademark, or trade name is allowed as an ordinary and necessary business expense deduction. | equal in amount or payable pursuant to a fixed formula.<br>Fixed-sum and contingent payments that are no longer deductible under the House bill are chargeable to capital account and are to be amortized over the useful life of the franchise, trademark, or trade name to the extent allowed under present law.<br>The House bill also repeals a provision of present law that prohibits a deduction for costs of acquiring trademarks and trade names and provides that deductions for certain payments are to be recaptured on the disposition of the franchise, trademark, or trade name.<br>***Effective date***.--Generally, transfers that occur after July 10, 1989, unless pursuant to a binding written contract in effect on that date and at all times thereafter until the transfer occurs. The limitation on the deductibility of contingent payments is effective for transfers that occur after August 4, 1989, unless pursuant to a binding written contract in effect on that date and at all times thereafter until the transfer occurs. | ***Effective date***.--Transfers that occur after October 2, 1989, unless pursuant to a binding written contract in effect on that date and at all times thereafter until the transfer occurs. |
| 3. **Installment sales treatment of timeshares and residential lots sold by C corporations (sec. 11623 of the House bill)** | A taxpayer who disposes of a timeshare or a residential lot on the installment plan generally may report income derived from such a disposition on the installment method if the taxpayer elects to pay interest on the amount of deferred tax that is attributable to the use of the installment method.<br>A taxpayer who elects to pay interest with respect to an installment sale of a timeshare or a residential lot may use the installment method in | The House bill modifies the amount of interest that is payable by a C corporation that elects to use the installment method with respect to an installment sale of a timeshare or a residential lot. Under the bill, the amount of interest for any taxable year is determined for all outstanding installment obligations with respect to which an election was made by multiplying the deferred tax with respect to all such obligations by the underpayment rate in effect for the month with or within which the taxable year ends. | No provision. |

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|  | determining alternative minimum taxable income. However, for purposes of the adjusted current earnings provision of the alternative minimum tax, the installment method may not be used in determining income derived from an installment sale. | The portion of the interest that is allocable to installment obligations that have not been outstanding for a two-year period as of the close of the taxable year or that are in default as of the close of the taxable year is not to result in an increase in tax for such taxable year. Instead, if such installment obligations are not in default at the close of any taxable year after the end of the two-year period, the amount of interest that was determined under the proposal but was not added to tax is to be added to tax for such year (together with additional interest at the underpayment rate for each year that the interest has not been added to tax).<br>A C corporation that elects to pay interest with respect to an installment sale is allowed to use the installment method for purposes of the adjusted current earnings provision of the alternative minimum tax.<br>***Effective date***.--Dispositions occurring in taxable years beginning after December 31, 1989. |  |

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| **G. Employment Tax Provision**<br>**1. Payroll tax deposit speedup (sec. 11632 of the House bill and sec. 6632 of the Senate amendment)** | Treasury regulations have established the system under which employers deposit income taxes withheld from employees' wages and FICA taxes. The frequency with which these taxes must be deposited increases as the amount required to be deposited increases. Employers are required to deposit these taxes as frequently as eight times per month, provided that the amount to be deposited equals or exceeds $3,000. These deposits must be made within three banking days after the end of the eighth-monthly period. | Employers who are on the eighth-monthly system are required to deposit income taxes withheld from employees' wages and FICA taxes by the close of the next banking day (instead of by the close of the third banking day) after any day on which the business has an amount to be deposited equal to or greater than $1 million (regardless of whether that day is the last day of an eighth-monthly period).<br>*Effective date*.--January 1, 1994. | Employers who are on the eighth-monthly system are required to deposit income taxes withheld from employees' wages and FICA taxes by the close of the applicable banking day (instead of by the close of the third banking day) after any day on which the business has an amount to be deposited equal to or greater than the threshold amount (regardless of whether that day is the last day of an eighth-monthly period).<br>For 1990, the applicable banking day is the first and the threshold amount is $1,950,000. For 1991, the applicable banking day is the third and the threshold amount is $1,500,000. For 1992, the applicable banking day is the third and the threshold amount is $1,600,000. For 1993, the applicable banking day is the first and the threshold amount is $1,700,000. For 1994, the applicable banking day is the second and the threshold amount is $1,775,000.<br>The Treasury Department is given authority to issue regulations for 1995 and succeeding years to provide for similar modifications to the date by which deposits must be made in order to minimize unevenness in the receipts effects of the provision.<br>*Effective date*.--August 1, 1990. |

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| **H. Miscellaneous Provisions**<br>**1. Exclusion for damages received for personal injury (sec. 11641 of the House bill)** | Under present law, damages received on account of personal injury are excludable from gross income. In some cases, courts have held that this exclusion is available even though there is no physical injury, for example, in cases involving employment discrimination. | Under the House bill, the exclusion for damages received for personal injury is limited to cases involving physical injury or sickness.<br>***Effective date***.--The provision is effective for damages received after July 10, 1989, in taxable years ending after such date, other than amounts received under a written binding agreement, court decree, or mediation award in effect on July 10, 1989. | No provision. |
| **2. Tax pre-contribution gain on certain in-kind partnership distributions (sec. 11642 of the House bill and sec. 6681 of the Senate amendment)** | Income, gain, loss, and deduction with respect to property contributed to a partnership by a partner is required to be shared among partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution. Thus, if appreciated property that was contributed to the partnership is sold by the partnership, gain recognized on the sale is required to be allocated to the contributing partner to the extent he has not previously taken the pre-contribution gain into account.<br>A partner generally does not, however, recognize gain on a distribution of partnership property (except on a distribution of money in excess of a partner's basis in his partnership interest). Thus, if appreciated property that was contributed by a partner is distributed to other partners (rather than sold by the partnership), the contributing partner may avoid recognizing the pre-contribution gain. | The bill provides that, in the case of a distribution of contributed property, the contributing partner is treated as recognizing gain or loss. Gain or loss recognition is not required under the bill, however, to the extent partnership property is distributed to the partner who originally contributed the property to the partnership. When gain or loss recognition is required under the provision, the amount the contributing partner is treated as recognizing is equal to the amount he would have had to take into account by reason of the variation between basis and value upon contribution of the property, had the property been sold by the partnership at its fair market value at the time of the distribution.<br>***Effective date***.--The provision is effective with respect to property contributed to a partnership after July 10, 1989. | The provision modifies the House bill in the following respects: (1) the provision applies only to distributions of property within 3 years following the time at which it was contributed; (2) a special rule provides that, if property contributed by one partner is distributed to another partner, and other property of a like kind is distributed to the contributing partner within a limited time period, then, to the extent of the value of the property actually distributed to the contributing partner, the contributing partner is treated as receiving a distribution of property that he contributed; and (3) the provision has a different effective date.<br>***Effective date***.--The provision is effective with respect to property contributed to a partnership after October 3, 1989. |
| **3. Treatment of cellular** | Under present law, special rules apply to | The House bill expands the definition of | No provision. |

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| **telephones and other similar telecommunications equipment used in a trade or business (sec. 11643 of the House bill)** | costs incurred to purchase or lease certain listed property that is used in a trade or business. First, if for the taxable year that listed property is placed in service the use of the property for trade or business purposes does not exceed 50 percent of the total use of the property, then the depreciation deduction with respect to such property is determined by using the straight-line method and a recovery period equal to the class life of the property.<br>Second, if an individual owns or leases listed property that is used by the individual in connection with the performance of services as an employee, no depreciation deduction, expensing allowance, or deduction for lease payments is available with respect to such use unless the use of the property is for the convenience of the employer and required as a condition of employment.<br>Third, no deduction is allowed with respect to listed property unless the taxpayer maintains adequate records or provides other sufficient evidence that establishes the amount of business use, investment use, and personal use of the listed property.<br>Listed property generally is defined as (1) any passenger automobile; (2) any other property used as a means of transportation; (3) any property of a type generally used for purposes of entertainment, recreation, or amusement; (4) any computer or peripheral equipment; and (5) any other property of a type specified in Treasury regulations. | listed property to include cellular telephones and other similar telecommunications equipment.<br>***Effective date.***--Generally, property placed in service in taxable years beginning after | |

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| | | December 31, 1989. | |
| **4. Joint purchase of life estate and remainder interest (sec. 11645 of the House bill)** | The purchaser of an interest in property is, for income tax purposes, entitled to amortize the cost of the interest over its expected life. On the other hand, a person who divides an interest in property into two parts cannot create an amortizable asset where none previously existed. | No depreciation or amortization deduction is allowed for a term interest in property for any period during which the remainder interest in such property is held (directly or indirectly) by a related person.<br>The taxpayer's basis in a term interest is reduced by the deductions disallowed by the provision, and the remainderman's basis in the remainder is increased by those deductions.<br>***Effective date***.--Interests acquired or created after July 27, 1989, in taxable years ending after such date. | No provision. |
| **5. Information reporting of points on mortgage loans (sec. 11646 of the House bill)** | Any person who, in the course of a trade or business during a calendar year, receives from an individual $600 or more of interest on an obligation secured by real property must file an information return with the Internal Revenue Service and must provide a copy of that return to the payor. The information return generally must include the name, address, and taxpayer identification number of the individual from whom the interest was received and the amount of the interest received for the calendar year. Treasury regulations provide that points are not to be treated as interest for purposes of this reporting requirement. | Any person required to file an information return with respect to mortgage interest must include on such return the amount of points received on the mortgage during the calendar year and indicate whether the points were paid directly by the borrower (as opposed to being withheld from the loan disbursement).<br>***Effective date***.--Returns and statements the due date for which (determined without regard to extensions) is after December 31, 1990. | No provision. |

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| **6. Tax exemption for Overseas Private Investment Corporation (sec. 11648 of the House bill)** | The Foreign Assistance Act of 1961, as amended, specifically provides that the Overseas Private Investment Corporation (OPIC) is exempt from all Federal, State, and local taxes (22 U.S.C. sec. 2199(j).<br>The International Cooperation Act of 1989, H.R. 2655, (passed by the House on June 29, 1989) would amend and recodify the Foreign Assistance Act of 1961, including the provisions governing OPIC, but would not specifically provide that OPIC is exempt from Federal income taxes.<br>The Internal Revenue Code provides that a corporation organized under an Act of Congress which is an instrumentality of the United States is exempt from Federal income tax only if the exemption is provided under such Act as amended and supplemented before July 18, 1984, or if the exemption is provided in the Internal Revenue Code or a revenue Act. | The House bill amends the Internal Revenue Code to provide that OPIC is exempt from Federal income taxes.<br>***Effective date***.--Date of enactment. | No provision. |
| **7. Access to tax information by the Department of Veterans Affairs (sec. 11650 of the House bill)** | The Internal Revenue Code prohibits disclosure of tax returns and return information of taxpayers, with exceptions for authorized disclosure to certain Governmental entities in certain enumerated instances. Among the disclosures permitted under the Code is disclosure of return information to Federal, State, and local agencies administering certain programs under the Social Security Act or the Food Stamp Act of 1977. Disclosure, pursuant to a written request by the agency, is for the purpose of determining eligibility for, and the correct amount of benefits under, certain enumerated programs. Any authorized recipient of return information must maintain a system of | (a) The bill allows disclosure of certain third-party and self-employment tax information to the Department of Veterans Affairs (DVA) to assist DVA in determining eligibility for, and establishing correct benefit amounts under, certain of its needs-based pension and other programs. Thus, the DVA will have direct access to information on the types and amounts of income received by veterans. The income tax returns filed by the veterans themselves will not be disclosed to DVA.<br>(b and c) The DVA is required to comply with the safeguards presently applicable to other Federal agencies that receive similar tax | No provision. |

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|  | safeguards to protect against unauthorized redisclosure of the information. | information for similar benefits verification purposes. These safeguards include independent verification of tax data, notification to the individual concerned, and the opportunity to contest agency findings based on such information.<br>*Effective date*.--Date of enactment. Information disclosed pursuant to this provision may not be used to reduce, deny, or otherwise affect any benefit provided before the date of enactment. |  |
| **8. IRS notice to taxpayers of underreporting of amounts withheld (sec. 11651 of the House bill)** | Under procedures in effect for taxable years beginning before 1987, the Internal Revenue Service did not notify taxpayers or make adjustments on income tax returns when it was determined that the amount reported as withheld on an income tax return was less than the amount reported on an information return. On March 22, 1989, the Internal Revenue Service announced revisions in its procedures for the 1987 taxable year and thereafter. Under these revised procedures, discrepancies involving amounts reported as withheld on information returns will be adjusted in the same manner as discrepancies in amounts reported as withheld on Forms W-2 or W-2P. Such an adjustment may involve a correction of the return where information has been reported on the wrong part of the return. In other cases, the Internal Revenue Service contacts the taxpayer to inform the taxpayer of the discrepancy. | If, in connection with one or more information return matching programs, the Internal Revenue Service determines that the amount of tax shown on information returns as withheld for any taxable year exceeds by $5 or more the amount of tax shown on the income tax return as withheld for that taxable year, then the Internal Revenue Service is required to notify the taxpayer of such excess. In addition, the IRS notice must inform taxpayers of how to file a claim for a refund of these unreported withheld amounts.<br>*Effective date*.--Information return matching that occurs after the date of enactment. | No provision. |

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| **9. Treatment of certain investment-oriented life insurance contracts (sec. 11652 of the House bill)** | In order to discourage the purchase of life insurance as a tax-sheltered investment vehicle, the Technical and Miscellaneous Revenue Act of 1988 altered the Federal income tax treatment of loans and other amounts received under a class of life insurance contracts that are statutorily defined as "modified endowment contracts."<br>A modified endowment contract generally is defined as any contract that satisfies the definition of a life insurance contract but fails to satisfy a 7-pay test. A contract fails to satisfy the 7-pay test if the cumulative amount paid under the contract at any time during the first 7 contract years exceeds the sum of the net level premiums that would have been paid on or before such time had the contract provided for paid-up benefits after the payment of 7 level annual premiums. | In the case of any contract that qualifies as a life insurance contract and that provides a death benefit that is payable only upon the death of one insured following, or simultaneously with, the death of another insured, if there is any reduction in such death benefit below the lowest level of such death benefit provided under the contract for the first 7 contract years, the 7-pay test would be applied for the first 7 contract years as if the contract had originally been issued at the reduced death benefit.<br>***Effective Date***.--Contracts that are entered into or that are materially changed on or after September 14, 1989. | No provision. |
| **10. Increase in refund review threshold for reports submitted to the Joint Committee on Taxation (sec. 11653 of the House bill)** | No refund or credit in excess of $200,000 of any income tax, estate or gift tax, or certain other specified taxes, may be made until 30 days after the date a report on the refund is provided to the Joint Committee on Taxation (sec. 6405). A report is also required in the case of certain tentative refunds. Additionally, the staff of the Joint Committee on Taxation conducts post-audit reviews of large deficiency cases and other select issues. | The threshold above which refunds must be submitted to the Joint Committee on Taxation for review is increased from $200,000 to $1,000,000.<br>***Effective date***.--Date of enactment, except that the higher threshold will not apply to a refund or credit with respect to which a report | No provision. |

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|  |  | was made before the date of enactment. |  |
| **11. IRS Study of private letter rulings process (sec. 11654 of the House bill)** | In response to requests from taxpayers, the IRS issues private letter rulings that state the position of the IRS regarding the Federal tax treatment of a transaction. | The IRS is required to report to the House Ways and Means Committee and the Senate Finance Committee on ways to strengthen and improve the private letter ruling process. The report should consider whether an overall increase in funding for the private letter ruling process would improve the issuance of rulings. In addition, the report should consider whether the user fees charged for rulings should be extended beyond the scheduled expiration date of September 30, 1990, and if so, (1) whether the current user fees should be increased and (2) whether the user fees should be available for use by the IRS for the ruling process instead of being deposited in the general fund of the Treasury.<br>***Effective date.***--The study is required to be provided to the House Ways and Means Committee and the Senate Finance Committee within six months of the date of enactment. | No provision. |
| **12. Deferral of recognition of gains for property required to be divested by Federal ethics requirements (sec. 11655 of House bill)** | Generally gain or loss is recognized on any sale, exchange or other disposition of property. Taxpayers may elect not to recognize gain realized on the involuntary conversion of certain property if property similar or related in service or use is acquired by the taxpayer within a specified replacement period (sec. 1033). This election does not apply to financial securities. | The House bill permits an individual required to divest himself of an asset pursuant to a certificate of divestiture issued pursuant to an executive order (relating to conflict-of-interest rules) in effect on the date of enactment to elect to roll over any gain realized upon sale to the extent that the individual purchases "permitted property" within 60 days.<br>Eligible individuals are those subject to an executive order (relating to conflict-of-interest rules) in effect on the date of enactment and the spouse or minor or dependent child of such individual. | No provision. |

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| | | Permitted property is limited to Treasury securities and any diversified investment fund approved under regulations.<br>***Effective date***.--Effective for divestments first required after the date of enactment. | |
| **13. Alternative recapture method for mutual savings banks and other thrift institutions changing from the reserve method to the specific charge-off method for bad debts (sec. 6622 of the Senate amendment)** | A thrift institution is permitted a deduction for a reasonable addition to a reserve for bad debts if at least 60 percent of its assets are invested in qualified assets. The reasonable addition to a reserve for bad debts for a thrift institution is an amount computed under the experience method or an amount equal to 8 percent of its otherwise taxable income. The amount of bad debt reserves are recaptured if the thrift institution is liquidated in a taxable transaction or makes dividend distributions in excess of post-1951 earnings.<br>A bank whose average adjusted bases of all assets exceeds $500 million (i.e., a "big bank") is not permitted any deduction for an addition to a reserve for bad debts. Instead such banks may deduct specific bad debts only in the year in which they become worthless (the "specific charge-off method"). In addition, big banks are required to recapture their existing bad debt reserves under one of two methods. Under the first method (called the "4-year recapture method"), the balance of the reserve generally is recaptured at the following rates: 10 percent in the first year, 20 percent in the second year, 30 percent in the third year, and 40 percent in the fourth year. Under the second method (called the "cut-off method"), specific bad debts on loans made before the change in method are charged to the reserve. Then, the balance of the reserve is | No provision. | A thrift institution that changes from the reserve method of accounting for bad debts to the specific charge-off method would be allowed to elect to recapture only the so-called "experience portion" of its bad debt reserves under the "4-year recapture method" applicable to commercial banks. However, if the sum of the specific bad debts at the end of any year on loans held by the taxpayer before the accounting method change exceeds the cumulative amount of reserves required to be recaptured by the end of that year, the excess would not be deducted, but would be charged to the unrecaptured portion of the bad debt reserves (similar to the "cut-off method"). In addition, any remaining bad debt reserves would be recaptured when excessive dividends are paid by the thrift institution or upon partial or complete liquidation of the thrift institution.<br>***Effective date***.--Effective for taxable years ending after the date of enactment. |

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|  | recaptured as the reserve balance exceeds the amount of pre-change loans that remain outstanding. |  |  |
| **14. Treatment of certain timber activities under the passive loss rules (sec. 11965 of the House bill)** | Deductions from passive trade or business activities, to the extent they exceed income from all such passive activities (exclusive of portfolio income), generally may not be deducted against other income. Suspended losses are carried forward and treated as deductions from passive activities in the next year, and are allowed in full when the taxpayer disposes of his entire interest in the activity to an unrelated party in a transaction in which all recognized gain or loss is realized.<br>An activity generally is treated as passive if it is a rental activity, or if the taxpayer does not materially participate in it, i.e., the taxpayer is not involved in the operations of the activity on a basis which is regular, continuous, and substantial. The term passive activity does not, however, include a working interest in oil or gas property that the taxpayer holds directly or through an entity that does not limit the liability of the taxpayer with respect to such interest. | The bill provides that passive activities do not include an interest in qualified timber property held by a natural person, directly or through an entity that does not limit the liability of such person with respect to such interest. Qualified timber property means a woodlot or other site located in the United States that will contain trees in significant commercial quantities and that is held by the taxpayer for the planting, cultivating, caring for, and cutting of trees for sale or use in the commercial production of timber products.<br>***Effective date***.--Taxable years beginning after December 31, 1989. | No provision. |
| **15. Modification of rehabilitation tax credit under passive loss rule and for certain relocated buildings (secs. 11112 and 11647 of the House bill)** | An income tax credit is provided for certain expenditures incurred in rehabilitation of certified historic structures and certain nonresidential buildings placed in service before 1936. The applicable rehabilitation tax credit percentage is 20 percent for certified historic structures and 10 percent for qualified rehabilitated buildings (other than certified historic structures) that are nonresidential and that were originally place in |  |  |

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|  | service before 1936. |  |  |
| ***a. Passive loss restrictions on credit use*** | *a. Passive loss restrictions on credit use*.--Credits from passive activities generally are limited to the tax attributable to the passive activities. A special $25,000 allowance is provided in the case of passive activity losses and the deduction equivalent amount of credits attributable to rental real estate activities. In the case of low-income housing and rehabilitation tax credits, the $25,000 (deduction equivalent) amount is allowed regardless of whether the taxpayer actively participates in the activity, and is phased out ratably as the taxpayer's adjusted gross income, with certain modifications, increases from $200,000 to $250,000. | *a. Passive loss restrictions on credit use*.--The $25,000 deduction equivalent allowance is modified by removing the $200,000 to $250,000 adjusted gross income phaseout, in the case of rehabilitation tax credits.<br>***Effective date***.--Property placed in service after December 31, 1989. If the property is held through a partnership or other passthrough entity, the taxpayer's interest in the partnership or other passthrough entity must have been acquired after December 31, 1989. | *a. Passive loss restrictions on credit use*.--No provision. |
| ***b. Treatment of certain relocated buildings*** | *b. Treatment of certain relocated buildings*.--Treasury regulations provide that certain relocated buildings are not eligible for the rehabilitation credit. This rule was stated in proposed regulations published June 28, 1985, interpreting the statute as amended by the Economic Recovery Tax Act of 1981. These regulations were finalized October 7, 1988. | *b. Treatment of certain relocated buildings*.--The bill provides that the provision of the regulations stating that certain relocated buildings are not eligible for the rehabilitation credit is to be applied prospectively from June 28, 1985. Under the bill, 30-year and 40-year buildings that were physically relocated and for which rehabilitation had commenced after the effective date of the Economic Recovery Tax Act of 1981 and before June 28, 1985 and that otherwise qualified for the rehabilitation credit are eligible for the rehabilitation credit despite being relocated.<br>***Effective date***.--Buildings with respect to which rehabilitation had commenced at the relocated site before June 28, 1985. | *b. Treatment of certain relocated buildings*.--No provision. |

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| **I. Tax-Exempt Bond Provisions** | | | |
| **1. Transitional housing bonds (sec. 11661 of the House bill)** | Bonds issued to finance qualified residential rental projects are tax-exempt qualified private activity bonds. Treasury regulations provide that qualifying property does not include living facilities which are to be used on a transient basis. Property does not fail to qualify as residential rental property merely because part of the building in which the property is located is used for purposes other than residential rental purposes. However, that part of the building used for non-residential purposes, unless the facilities are functionally related and subordinate to residential use, may not be financed with the proceeds of tax-exempt bonds, except for an insubstantial portion of those proceeds. | The House bill provides that certain transitional housing for the homeless will not be deemed transient in nature and, accordingly, may qualify for tax-exempt financing under section 142(d). The bill further provides that certain non-housing areas of buildings that are used to provide transitional housing for the homeless will be eligible for tax-exempt bond financing.<br>***Effective date***.--The provision is effective for bonds issued after December 31, 1989. | No provision. |
| **2. Rebate election for certain mortgage revenue bonds (sec. 11662 of the House bill)** | A State or local government may issue tax-exempt qualified mortgage bonds under conditions specified in Code section 143. One requirement is that any arbitrage earnings and earnings thereon be credited or paid to the mortgagor. The issuer also may elect, before the date of issue, to pay the rebate amount to the United States in lieu of the mortgagors. | The House bill allows issuers of qualified mortgage bonds issued before January 1, 1989, to elect to rebate arbitrage earnings to the Federal Government. This election must be made within 12 months of the date of enactment and is only available for amounts required to be paid or credited after the date the election is made.<br>***Effective date***.--The provision is effective upon the date of enactment. | No provision. |
| **3. Restrictions on the issuance of hedge bonds (section 11663 of the House bill)** | Issuers of tax-exempt bonds are required to rebate to the Federal Government arbitrage earnings on the investments unrelated to the governmental purpose of the borrowing (Code sec. 148). While the arbitrage rules reduce incentives for early issuance, the Code does not specifically prohibit issuance of bonds for the | The House bill provides that interest on hedge bonds is taxable unless two requirements are satisfied: (1) at least 95 percent of the reasonably expected costs of issuance for an issue are paid within 180 days of the date of issue and the payment of such costs may not be contingent; (2) the issuer must reasonably expect to spend 15 | No provision. |

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|  | purpose of hedging against potential future increases in interest rates. | percent of the spendable proceeds of the issue for the governmental purposes of the issue within 12 months after the date of issue, another 15 percent for such purposes within 24 months after the date of issue, another 20 percent for such purposes within 36 months after the date of issue, and an additional 35 percent for such purposes within 60 months after the date of issue.<br>A bond issued as part of an issue is a hedge bond unless: (1) the issue qualifies for the 3-year temporary period exception from the arbitrage rules, and (2) not more than 50 percent of the proceeds of the issue are invested in nonpurpose investments with a guaranteed yield for a period of 4 years or longer.<br>The House bill grants authority to the Secretary of the Treasury to promulgate regulations (1) to prevent circumvention of these rules and (2) to create an exception, if appropriate, from these rules for bonds issued to finance the reasonable self-insurance needs of the governmental agency issuing the bonds or the reasonable self-insurance needs of the subordinate governmental units of the issuer.<br>***Effective date***.--This provision is effective for bonds issued after September 14, 1989, unless sold on or before September 14, 1989, and issued before October 15, 1989. |  |
| **4. Extension of six-month exception to arbitrage rebate requirement (sec. 11664 of the House bill)** | The Internal Revenue Code restricts the ability to invest tax-exempt bond proceeds at yields higher than the yield on the issue.<br>Issuers of all tax-exempt bonds are required | The House bill expands the six-month exception from the arbitrage rebate requirements to two years for certain bonds from which at least 75 percent of the net proceeds of the issue are to be used for construction. Qualifying bonds | No provision. |

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| | to rebate certain arbitrage profits earned on nonpurpose investments acquired with gross proceeds of tax-exempt bonds. Generally, the amount required to be rebated is determined, and paid, on an issue-by-issue basis at least once each five years.<br>Arbitrage profits are not required to be rebated with respect to an issue if all gross proceeds are expended for the governmental purpose of the issue within 6 months of the issue date. | are (1) bonds which are not private activity bonds; (2) qualified 501(c)(3) bonds; or (3) private activity bonds for facilities owned by governmental units.<br>To satisfy the terms of the exception, not less than 10 percent of the net proceeds (including investment proceeds) of the issue must be spent within six months of the date of issue, not less than 50 percent of the net proceeds must be spent within one year of the date of issue, not less than 90 percent of the net proceeds must be spent within 18 months of the date of issue, and not less than 100 percent of the net proceeds must be spent within two years of the date of issue. The expenditure test is met only if the expenditures are for the purpose for which the bonds were issued. Arbitrage earned on the debt service reserve fund must be rebated after the 6-month or 2-year period, respectively. Failure to comply with either the six-month or the two-year exceptions, results in the gross proceeds of the issue being subject to the regular rebate rules as of the date of issue.<br>***Effective date***.--The provision is effective for bonds issued after the date of enactment. | |
| **5. Modification of placed-in-service date for certain tax-exempt bond-financed property (sec. 11665 of the House bill)** | | | |
| *a. Certain qualified redevelopment bonds* | *a*. Under a transition rule to the Tax Reform Act of 1986, a bond is a qualified redevelopment bond if it is issued for a project which is part of | *a*. The House bill amends present law to provide that the facilities which are to be part of the Kenosha Downtown Redevelopment project | *a*. No provision. |

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| | the Kenosha Downtown Redevelopment project, and is located in an area bounded on the east by the east wall of the Army Corps of Engineers Confined Disposal Facility (extended), on the north by 48th Street (extended), on the west by the Chicago & Northwestern Railroad tracks, and on the south by the north line of Eichelman Park (extended). To be qualified bonds, the facilities to be financed must be identified at the time the bonds are issued. In addition, to be qualified bonds, the aggregate face amount of such bonds may not exceed $105,000,000. Authority to issue such bonds expires December 31, 1990. | and which are to be financed with qualified bonds, need not be identified at the time the bonds are issued. In addition, the House bill provides that authority to issue such bonds expires on September 3, 1996. | |
| *b. Certain property eligible for prior-law accelerated cost recovery* | *b.* Under a transition rule to the Tax Reform Act of 1986, as amended by the Technical and Miscellaneous Revenue Act of 1988, property which is part of the Kenosha Downtown Redevelopment project and is financed by certain redevelopment bonds (described above) may be eligible for accelerated cost recovery as in effect prior to 1986 Act. The property must be placed-in-service by January 1, 1989 or January 1, 1991 (depending on the class life of such property) to qualify for the provision. | *b.* Extends the placed-in-service dates applicable to property which is part of the Kenosha Downtown Redevelopment project until September 3, 1999. | *b.* No provision. |

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| **J. Modifications to Corporate Alternative Minimum Tax (secs. 11611 and 11612 of the House bill)** | | | |
| 1. Adjusted current earnings (ACE) | For taxable years beginning after December 31, 1989, a corporation's alternative minimum taxable income is increased by 75 percent of the amount by which the adjusted current earnings exceeds alternative minimum taxable income (computed without the ACE adjustment and without the net operating loss deduction). | | No provision. |
| *a. Book treatment of certain items* | a. Depreciation, intangible drilling costs, depletion, and mining expenses can not be written off under ACE faster than under the taxpayer's book method (determined by comparing the present value of deductions under the prescribed tax method and the book method). | a. Repeals present law rule relating to book treatment. | |
| *b. Dividends received deduction* | b. (i) The 100-percent dividends received deduction is allowed for ACE only where the corporation receiving the dividend owns 80 percent of the payor corporation but is ineligible to file a consolidated return. | b. (i) Allows the 100-percent dividends received deduction for ACE without regard to whether consolidated returns can be filed. | |
| | (ii) The 80-percent dividend received deduction for dividends from 20-percent owned corporations is not allowed under ACE. | (ii) Allows the 80-percent dividends received deduction for ACE. | |
| *c. Foreign sales corporations dividends paid to certain cooperatives* | c. The dividends-received deduction is not allowed for dividends paid to a parent corporation out of earnings not subject to tax by reason of foreign sales corporation rules. | c. Allows the dividends-received deduction for dividends received from a foreign sales corporation by a qualified cooperative engaged in the marketing of agricultural or horticultural products. | |
| *d. Income from the discharge of indebtedness* | d. Income from the discharge of indebtedness is included in ACE to extent included in earnings and profits. | d. Excludes income from the discharge of indebtedness from ACE to extent excluded from taxable income generally (i.e., in bankrupt and | |

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| | | insolvent cases). | |
| ***e. Capitalization of certain expenses*** | e. ACE follows the earnings and profits rules on capitalization. Thus the regular tax de minimis rules and exceptions do not apply. | e. Repeals ACE rule. The regular tax rules apply. | |
| ***f. Change of ownership of corporation*** | f. ACE eliminates built-in-losses following a change in corporate ownership for changes after October 22, 1986. | f. Makes the rules applicable only to changes of ownership occurring in taxable years beginning after December 31, 1989. | |
| ***g. Intangible drilling costs (IDCs)*** | g. For purposes of ACE (and earnings and profits), IDCs are amortized over the 60-month period beginning when production commences. Taxpayers may elect 10-year amortization for regular tax purposes, in lieu of incurring a minimum tax preference. | g. Amortization begins for purposes of ACE (and earnings and profits) when expenses are paid or incurred. Taxpayers (corporations and individuals) may elect this 60-month amortization for purposes of the regular tax. | |
| ***h. Annuities*** | h. Income on annuity contracts is included in ACE. Annuity contracts held under a qualified annuity plan or which is a qualified funding asset are excepted. | h. Repeals rules relating to annuities as unnecessary. | |
| ***i. Installment sales*** | i. Installment sale reporting is not allowed under ACE. | i. Allows the installment method to be used for ACE with respect gain for which interest is paid at the tax underpayment rate. | |
| ***j. Treasury guidance*** | | j. Directs Treasury to provide guidance on ACE by March 15, 1991.<br>***Effective date***.--Taxable years beginning after December 31, 1989. | |
| 2. Other amendments to the minimum tax | | | No provision. |
| ***a. Home construction contracts*** | a. Small home construction contracts are excepted from the minimum tax rule requiring taxpayers to use the percentage of completion method of accounting. | a. Excepts all home construction contracts are from the minimum tax rule.<br>***Effective date***.--Contracts entered into in | |

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| | | taxable years beginning after September 30, 1990. | |
| ***b. Research expenditures*** | b. Research expenses of individuals must be amortized over a 10-year period for purposes of the minimum tax. | b. Repeals the minimum tax adjustment for research expenses of individuals who materially participate in the activity in which the research expenses are incurred.<br>***Effective date***.--Taxable years beginning after December 31, 1990. | |
| ***c. Foreign tax credit*** | c. The foreign tax credit may not offset more than 90 percent of the taxpayer's pre-foreign tax credit tentative minimum tax. | c. Eliminates the 90-percent limit in the case of corporations which meet four requirements. First, more than 50 percent of both the voting power and value of the stock of the corporation must be owned by U.S. persons who are not members of an affiliated group which includes such corporation. Second, all of the activities of the corporation must be conducted in one foreign country with which the United States has an income tax treaty in effect and such treaty must provide for the exchange of information between such country and the United States. Third, the corporation generally must distribute to its shareholders all current earnings and profits (except for certain amounts utilized for normal maintenance or capital expenditures related to its existing business). Fourth, all of such distributions which are received by U.S. persons must be utilized by such persons in a U.S. trade or business.<br>***Effective date***.--Taxable years beginning after March 31, 1990 (with a proration rule for certain years including that date). | |
| ***d. Orphan drug credit*** | d. The orphan drug credit may not reduce a taxpayer's tax to less than the tentative minimum tax. No carryovers are permitted. | d. Increases the minimum tax credit by the amount of the orphan drug credit not allowed solely by reason of the tentative minimum tax | |

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|  |  | limitation.<br>***Effective date***.--Taxable years beginning after December 31, 1989, with respect to credits disallowed in taxable years beginning after December 31, 1986. |  |
| ***e. Minimum tax credit*** | e. A minimum tax credit is allowed for minimum tax attributable to deferral items. | e. Allows the minimum tax credit to corporations for the entire minimum tax liability.<br>***Effective date***.--Minimum tax credits arising in taxable years beginning after December 31, 1989. |  |
| ***f. Treasury study*** | f. No provision. | f. Directs the Treasury Department to conduct a study of the proper class life for automobiles and light trucks. The study is due one year after date of enactment. |  |

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| **K. Extension of Certain Expiring Tax Provisions** | | | |
| **1. Exclusion for employer-provided educational assistance (sec. 11101 of the House bill)** | Under present law, employer-provided educational assistance is generally excludable from gross income if the education is job-related. Prior to 1989, employer-provided educational assistance was excludable from an employee's gross income for income and employment tax purposes regardless of whether the education was job-related. The amount of the exclusion was limited to $5,250 per year and did not apply to graduate-level courses. This exclusion expired for taxable years beginning after December 31, 1988. | Under the House bill, the exclusion for educational assistance is restored retroactively to the date of expiration and is extended so that it expires for taxable years beginning after December 31, 1991. The prior-law dollar limit and graduate-level course restriction continue to apply. The bill also clarifies the treatment of educational assistance under the working condition fringe benefit rules.<br>***Effective date***.--The provision is effective for taxable years beginning after December 31, 1988. | No provision. |
| **2. Targeted jobs tax credit (sec. 11102 of the House bill)** | A tax credit is available on an elective basis to employers of individuals described in at least one of nine targeted groups. The nine groups consist of individuals who are either recipients of payments under means-tested transfer programs, economically disadvantaged (as measured by family income), or disabled. The credit generally is equal to 40 percent of the first $6,000 of qualified first year wages. A credit equal to 40 percent of up to $3,000 of wages to any disadvantaged summer youth employees is also allowed. The employer's deduction for wages must be reduced by the amount of the credit. The credit is scheduled to expire December 31, 1989.<br>Present law also authorizes appropriations for administrative and publicity expenses relating to the credit through September 30, 1989. These | The credit is extended for two years, through December 31, 1991, with one modification. The modification would require that employers: (1) specifically identify the categories (but not to exceed two) for which the individual is believed to be eligible when requesting certification and (2) indicate that a good faith effort was made to determine that the individual is eligible for the credit.<br>The authorization for appropriations is extended for two years, October 1, 1989-September 30, 1991.<br>***Effective date***.--The provision applies with respect to targeted-group individuals who begin work for the employer after December 31, 1989 and before January 1, 1992. Under the provision, the credit does not apply with respect | No provision. |

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| | monies are to be used by the Internal Revenue Service (IRS) and Department of Labor to inform employers of the credit program. | to individuals who begin work for the employer after December 31, 1991. | |
| **3. Mortgage revenue bonds and mortgage credit certificates (sec. 11103 of the house bill)** | Qualified mortgage revenue bonds (MRBs) generally are used to finance the purchase or qualifying rehabilitation or improvement of single family, owner-occupied homes. The (MRBs) must meet purchase price, income eligibility limitations and other restrictions.<br>Qualified governmental units may elect to exchange qualified mortgage bond authority for authority to issue mortgage credit certificates (MCCs). MCCs entitle homebuyers to nonrefundable income tax credits (not to exceed $2,000 per year) for a specified percentage of interest paid on mortgage loans on their principal residences. Once issued, an MCC remains in effect as long as the residence being financed continues to be the certificate-recipient's principal residence. MCCs generally are subject to the same eligibility requirements as qualified mortgage bonds.<br>The authority to issue (MRBs) and to exchange (MCCs) with respect to qualified bonds is scheduled to expire on December 31, 1989. | The House bill extends the MRB and MCC programs for two additional years (i.e., until December 31, 1991).<br>***Effective date***.--The provision is effective on the date of enactment. | No provision. |
| **4. Qualified small-issue bonds (sec. 11104 of the House bill)** | Interest on certain small issues of private activity bonds is exempt from tax if at least 95 percent of the net proceeds of the bonds is to be used to finance manufacturing facilities or certain land or property for first-time farmers ("qualified small-issue bonds").<br>To issue a qualified small-issue bond, the | The provision extends authority to issue qualified small-issue bonds for two years (through December 31, 1991). | No provision. |

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| | issuer must receive an allocation from the State private activity volume cap. Authority to issue qualified small-issue bonds expires December 31, 1989. | | |
| **5. Business energy tax credit for certain property (sec. 11105 of House bill)** | The energy investment tax credit for solar and geothermal properties is 10 percent. The credit for ocean thermal property is 15 percent. These credits expire after December 31, 1989. | The energy investment tax credit is extended only for geothermal property for 2 years, i.e., through December 31, 1991, at the current 10 percent credit rate.<br>***Effective date***.--The extension is effective after December 31, 1989. | No provision. |
| **6. Deduction for health insurance expenses of self-employed individuals (sec. 11106 of the House bill)** | Under present law, a self-employed individual may deduct 25 percent of the health insurance expenses of the individual and the individual's spouse and dependents. Also under present law, a more than 2-percent shareholder of an S corporation is treated as a partner in a partnership for purposes of the employee fringe benefit provisions of the Code. The 25-percent deduction expires for taxable years beginning after December 31, 1989. | Under the House bill, the 25-percent deduction for health insurance expenses of self-employed individuals is extended so that it expires for taxable years beginning after December 31, 1991. The House bill also provides rules for applying the deduction in the case of more than 2-percent shareholders of S corporations.<br>***Effective date***.--The provision is effective for taxable years beginning after December 31, 1989. | No provision. |

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| **7. Low-income housing tax credit (sec. 11111 of the House bill)** | | | No provision. |
| a. *Extension of credit* | Authority to allocate low-income housing tax credits expires December 31, 1989. | Provides for a permanent extension of the low-income housing tax credit. | |
| b. *Carryover of credit authority* | Unused credit authority may not be carried forward, nor may one State's credit authority be made available for projects in another State. | Allows a one-year carryforward of unused credit authority by allocating agencies. | |
| c. *Payment of credit* | The owner of a qualifying property receives the credit over 10 years but must maintain compliance with low-income restrictions for 15 years. | Generally retains present law but allows the taxpayer to elect to extend the period over which the credit is received to 15 years so that it coincides with the compliance period. | |
| d. *Credit recapture* | Accelerated portion of credit is recaptured if the qualified basis is reduced or if the property is disposed of without posting bond satisfactory to Treasury. | Eliminates recapture if election of the 15 year credit period is made. If noncompliance occurs, in addition to elimination of future credits, owners pay penalty equal to one year's credit. | |
| e. *Extended low-income use and options to purchase* | A building for which the owner receives a credit allocation is subject to a 15-year compliance period during which that part of the building for which the credits are claimed must be rented to low-income tenants at restricted rents. | Provides that at the end of the initial compliance period: (1) the owner may not evict low-income tenants and (2) the rents of low-income tenants must remain at the levels which would be permissible if the building was still under the compliance period.<br>Also provides that the allowance by the owner of certain rights of first refusal to low-income tenants will not affect tax benefits associated with the credit. | |
| f. *Allowance of credit for acquisition of existing property and substantial rehabilitation* | A 70-percent present value credit may be claimed for the taxpayer's basis in both (i) new construction and (ii) qualified substantial rehabilitation expenditures; provided that the | No credit is allowed for acquired properties unless substantial rehabilitation is done. If there is substantial rehabilitation, then all rehabilitation expenditures qualify for a 70 percent credit, and | |

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|  | property is not federally subsidized. | other eligible acquisition costs qualify for a 30 percent credit. |  |
|  | A 30-percent present value credit may be claimed for the taxpayer's basis in qualified acquisition property. To qualify for the acquisition credit, substantial rehabilitation need not be undertaken. The 30-percent credit is also available to federally subsidized buildings. | The rehabilitation expenditures must be on the low-income units or common areas substantially benefiting them. |  |
| *(1) Minimum qualifying expenditure* | To qualify as substantial rehabilitation, qualifying expenditures must average at least $2,000 of qualified basis per low-income unit, but need not be made on the low-income units. Expenses may be incurred over a 24-month period. | Increases the minimum qualifying expenditure for substantial rehabilitation from $2,000 of qualified basis per low-income unit to the greater of $3,000 of qualified basis per low-income unit or 10% of unadjusted basis. Requires that expenditures be allocable to low-income units. Credit periods for existing buildings do not begin before the first taxable year of the credit period for the rehabilitation expenditure. |  |
| *(2) Exception for buildings owned by governmental unit* |  | Buildings which were owned by, or on behalf of, a governmental unit may continue to qualify for the 30-percent present value credit on both qualified acquisition property and rehabilitation expenses if rehabilitation expenditures average at least $3,000 of qualified basis per low-income unit. Alternatively, these properties will be eligible for the 70-percent present value credit on rehabilitation expenses, if they satisfy the $3,000/10 percent rule. |  |
| ***g. Passive loss restriction on credit use*** | Credits from passive activities generally are limited to the tax attributable to the passive activities. A special $25,000 allowance is provided in the case of passive activity losses and the deduction equivalent amount of credits | The $25,000 deduction equivalent allowance is modified by removing the $200,000 to $250,000 adjusted gross income phaseout, in the case of low-income housing tax credits. |  |

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|  | attributable to rental real estate activities. In the case of low-income housing and rehabilitation tax credits, the $25,000 (deduction equivalent) amount is allowed regardless of whether the taxpayer actively participates in the activity, and is phased out ratably as the taxpayer's adjusted gross income, with certain modifications, increases from $200,000 to $250,000. |  |  |
| *h. Tax-exempt bond financed property: Annual credit limitation* | When 70 percent or more of the aggregate basis of a building and the land on which it is located is financed with the proceeds of tax-exempt bonds which are subject to the State's bond volume cap the owner may claim the 30-percent present value credit for the entire eligible basis of the building without receiving an allocation under the State's annual credit cap. | Expands the present-law exception from the credit allocation requirement to properties where 50 percent or more of the aggregate basis of the building and the land on which it is located is financed by bonds subject to the State bond volume cap. |  |
| *i. High-cost areas* | A maximum 70-percent present value credit is available for new construction and substantial rehabilitation expenditures. | Permits State allocating agency to increase the maximum credit (up to 91 percent present value) available for buildings in certain high-cost areas. |  |
| *j. 10-year rule* | Generally, properties placed in service within the last 10 years are ineligible for the credit.<br>Exceptions are provided for buildings transferred in which the new owner retains the basis of the previous owner. When the transferor is a qualified tax-exempt organization or a governmental entity, the 10-year rule is applied by looking to the placed-in-service date of the most recent taxable owner.<br>In addition, exceptions to the 10-year rule are provided (sec. 42(d)) for certain federally assisted properties, a default on which would result in a Federal Government budget outlay. | Grants two new exceptions from the 10-year rule:<br>(1) for low-income buildings the mortgages on which are subject to prepayment if the exception is necessary to avert conversion of the properties to market rate use.<br>(2) for certain buildings acquired from failed financial institutions. |  |

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| ***k. Credit and HUD section 8 programs*** | The credit is available to qualifying properties which also receive direct Federal assistance under HUD Section 8 programs. | Provides that only the 30-percent credit is available to property receiving assistance under the HUD Section 8 mod rehab program. | |
| ***l. Compliance with local building and health regulations*** | No sanction is imposed for credit properties in violation of State or local health or building codes or regulations. | Provides that the credit is not available to properties in violation of State and local health or building rules or regulations. If the violation is corrected within a specified period of its report, the building is treated as having been in compliance notwithstanding the temporary violation. | |
| ***m. Single room occupancy units, transitional housing for the homeless*** | A low-income unit must not be used on a transient basis. A single room occupancy unit is not considered transient if the unit is subject to at least a six-month lease. | Expands availability of the credit to certain transitional housing for the homeless. Includes portion of building used to provide supportive services in qualified basis. | |
| ***n. Four-unit, owner-occupied structures*** | Owner-occupied buildings with four or fewer units are ineligible for the credit. | Expands eligibility for the credit to owner-occupied buildings having four or fewer units. The expansion only applies to acquisition and rehabilitation of buildings pursuant to a development plan sponsored by a State or local government or qualified non-profit. | |
| ***o. Scattered site projects*** | All units in a project must be located on contiguous geographic sites. | Treats scattered site housing as one project if 100 percent of dwelling units are qualified low-income units and there is common plan of financing. | |
| ***p. Credits allocated to projects*** | Credits are allocated to buildings, although compliance is determined on a project basis. | Allows an allocation of credit on a project, rather than a building, basis. | |
| ***q. Determination of eligible basis*** | For the new construction credit, eligible basis is determined when the property is placed-in-service. For the acquisition and substantial rehabilitation credits eligible basis is determined at the end of the first taxable year of the credit period. This determination will be made before depreciation is taken into account. | Provides that the determination of eligible basis for all credits is made at the end of the first taxable year of the credit period. This determination will be made before depreciation is taken into account.<br>Eligible basis includes proceeds of loans | |

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| | | made through HUD Community Development Block Grants. | |
| *r. Determination of rent for rent-restricted units* | Maximum allowable rents for rent-restricted units are determined by 30 percent of qualifying income limitation adjusted for family size. | Uses apartment size rather than family size of occupants for determination of gross rent limitation. Uses actual family size as the basis for determination of qualification as a low-income tenant. | |
| *s. Rent floors* | For rent-restricted units, the rent is determined by taking 30 percent of the qualifying income limitation. Annually, as the qualifying income limitation changes, the allowable rent may change. | Sets the initial monthly rental payment as the minimum rental payment for the compliance period at the owner's option. | |
| *t. Rents for previously qualifying tenants whose incomes now exceed the qualifying income limitations* | A tenant who qualified for a rent-restricted unit may continue to be deemed to qualify even if his/her income grows to as much as 140 percent of the qualifying income limitation.<br>The maximum allowable rent is still determined by 30 percent of the qualifying income limitation. | For tenants of rent-restricted units with incomes in excess of 100 percent but less than 140 percent of the qualifying income limitation, rents may exceed 30 percent of the qualifying income limitation by 10 cents for each dollar of the tenant's income in excess the qualifying income limitation. | |
| *u. Determination of gross income* | Section 7872 recharacterizes certain loans with below-market interest rates for federal income tax purposes. A certain non-interest bearing deposit by a tenant with a continuing care facility generally would be, but for an exception to section 7872, treated by the tenant as a debt obligation on which the tenant receives taxable interest income. | Provides that income excluded under the special exception to the below-market rate interest rules for deposits in qualified continuing care facilities is to be taken into account in determining the income of the tenant for purposes of the income eligibility rules of the low-income housing credit. | |
| *v. Deep rent skewing* | To qualify under the deep rent skewing exception, at least 15 percent of the low-income units must be occupied by tenants whose incomes do not exceed 40 percent of area median income, the rents on such units must be restricted to 30 percent of the qualifying income limitation, and | Liberalizes the deep rent skewing rules by changing 300 percent to 200 percent. | |

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| | rents on the market rate units must be at least 300 percent of rents charged on comparable rent restricted units. | | |
| *w. At-risk rule for qualified nonprofit organizations* | Treats as an amount at risk certain nonrecourse financing provided by a qualified nonprofit organization, provided that certain requirements are met including that the financing is repaid within 90 days after the end of the 15-year compliance period. | No provision. | |
| *x. State plans* | Credits are allocated by State allocating agencies. | Mandates the development of a plan of allocation by State allocating agencies. | |
| *y. Allocation of only necessary credits* | For new or substantially rehabilitated property, allocating agencies may allocate up to a 70-percent present value credit. For acquisition property and Federally-subsidized property, the allocating agency may allocate up to a 30-percent present value credit. | Mandates that credit allocations to a building not exceed the level necessary for the financial feasibility of the project. | |
| *z. Project evaluation* | Allocating agencies may use any guidelines they choose to allocate credits to eligible properties. | Mandates State allocating agency evaluation of each credit project according to pre-established criteria. Qualified allocation plan must give highest priority to projects with the lowest percentage of costs attributable to intermediaries. Requires that the chief executive officer of locality have opportunity to comment. | |
| *aa. Semiannual determination of credit percentage* | Credit percentages are determined monthly by the Secretary. | Determines credit percentages on a semi-annual, rather than a monthly, basis. | |
| *bb. Administrative provisions* | Requires that credit forms be filed within 90 days after the end of each taxable year in the credit period. | Allows the taxpayer to file credit forms on the same day as required for filing tax returns. | |
| *cc. Effective date* | The credit is scheduled to expire after December 31, 1989. | ***Effective date.***– The proposal is generally effective for determinations made under section | |

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| | | 42 of the IRC with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1989. For projects not subject to the credit allocation limits, the provision generally applies to buildings placed in service after December 31, 1989.<br>The provision relating to the $25,000 allowance under the passive loss rules is effective for property placed in service after December 31, 1989. If the property is held through a partnership or other passthrough entity, the taxpayer's interest in the partnership or other passthrough entity must have been acquired after December 31, 1989. | |
| **8. Research and experimentation tax credit (sec. 11113 of the House bill)** | *In general.*--A 20-percent tax credit is allowed for qualified research expenditures in excess of a base amount. The credit is scheduled to expire after December 31, 1989.<br>*Computation of the base amount.*--The base amount is equal to the average of qualified research expenditures over the three preceding taxable years. | *In general.* The credit is modified and made permanent.<br>*Computation of the base amount.*--The base amount is computed by multiplying the taxpayer's fixed-base percentage by its average gross receipts for the three preceding years. In general, the fixed-base percentage equals the ratio of total qualified research expenditures to total gross receipts for any five years selected by the taxpayer from the 1983-88 period.<br>*Start-up companies.*-- A start-up company (i.e., a company that did not both incur qualified research expenditures and have gross receipts in at least three years between 1983-88) is assigned a fixed-base percentage of .03 for its first five years after 1989. After the fifth such taxable year, phase-in rules apply until after the tenth | No provision. |

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|  |  | year, when the taxpayer calculates its fixed-base percentage as the ratio of total qualified expenditures to total gross receipts from five years selected by the taxpayer from its fifth through tenth years. |  |
|  |  | *Fixed-base cap.*--In no case will a taxpayer's fixed-base percentage exceed .20. |  |
|  | *Base limitation.*--The base is subject to the limitation that it is never less than 50 percent of current qualified expenditures. | *Base limitation.*--In general, the base is subject to the limitation that it cannot be less than 50 percent of current-year qualified expenditures in 1990, 55 percent in 1991, 60 percent in 1992, 65 percent in 1993, 70 percent in 1994, and 75 percent thereafter. For start-up firms, the base is subject to the limitation that it cannot be less than 65 percent of current-year qualified expenditures in 1990 through 1993, 70 percent in 1994, and 75 percent thereafter. |  |
|  | *Trade or business limitation.*--Research expenditures of a taxpayer are eligible for the credit only if paid or incurred in a particular trade or business already being carried on by the taxpayer. | *Trade or business limitation.*--The trade or business limitation is liberalized with respect to in-house research expenditures if the principal purpose of the taxpayer in making such expenditures is the use of the research in the active conduct of a future trade or business. |  |
|  |  | *Treasury study.*--The Treasury Department would conduct a study every five years to evaluate the effectiveness and the revenue cost of the credit. |  |
|  |  | *Consistent treatment of R&E expenses.*--Qualified research expenses taken into account in computing a taxpayer's fixed-base percentage are to be determined on a basis which is consistent with the determination of qualified research expenses for the current year. |  |

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| | *University basic research credit.*--A 20-percent tax credit is allowed for certain corporate expenditures for university basic research. This credit is scheduled to expire after December 31, 1989.<br>*Relation to deduction for research expenses.*--The amount of and deduction allowable to a taxpayer under section 174 is reduced by an amount equal to 50 percent of a taxpayer's research credit determined for that year. | *University basic research credit.*--The university basic research credit would be made permanent.<br>*Relation to deduction for research expenses.*--The amount of any deduction allowable to a taxpayer under section 174 is reduced by an amount equal to 100 percent of a taxpayer's research credit determined for that year.<br>*Reasonableness requirement under section 174.*--The bill clarifies that research expenses are deductible under section 174 only to the extent that they are reasonable under the circumstances.<br>***Effective date.***--The provisions are effective after December 31, 1989. | |
| **9. Allocation and apportionment of research and experimental expenditures (Sec. 11114 of the House bill)** | Pursuant to Treasury regulations which were promulgated in 1977, research and experimental expenditures are generally allocated as follows: (1) expenses for research that is undertaken solely to meet legal requirements imposed by a government and which cannot reasonably be expected to generate income (beyond de minimis amounts) outside that government's jurisdiction are allocated solely to income from sources within that jurisdiction; and (2) remaining research expenses are generally apportioned to foreign source income based on either (a) gross sales, except that a taxpayer using this method may first apportion at least 30 percent of such expenses exclusively to the source where over 50% of the taxpayer's research is performed; or (b) gross income, except that expenses apportioned to U.S. and foreign source income | The House bill generally allocates research and experimental expenditures as follows: (1) expenses for research that is undertaken solely to meet legal requirements imposed by a government are allocated in the same manner as under present law; (2) remaining research expenses which are conducted in the U.S. are allocated 64% to U.S. source income, and such expenses which are conducted outside of the U.S. are allocated 64% to foreign source income; and (3) remaining research expenses are allocated and apportioned on the basis of either sales or gross income. If gross income is used, however, the amount apportioned to foreign source income can be no less than 30% of the amount that would be so apportioned under the sales method).<br>Research expenses incurred by U.S. persons | No provision. |

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|  | using a gross income method can not be less than 50% of the respective portions that would be apportioned to each income grouping using a combination of the sales and place-of-performance methods. | for activities conducted in space, in Antarctica, or on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, U.S. possession, or the United States, are allocated and apportioned in the same manner as if they were attributable to activities conducted in the United States. Such expenses incurred by foreign persons are allocated and apportioned as if they were attributable to activities conducted outside the United States.<br>***Effective date***.-- Taxable years beginning after August 1, 1989. |  |

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| **L. Revision of Civil Penalties** | | | |
| **1. Information reporting penalties (secs. 11701-11715 of the House bill)** | *In general.*--Any person that fails to file an information return with the Internal Revenue Service on or before the prescribed filing date is subject to a $50 penalty for each failure, with a maximum penalty of $100,000 per calendar year. In addition, any person that fails to provide a copy of an information return (a "payee statement") to a taxpayer on or before the prescribed due date is subject to a penalty of $50 for each failure, with a maximum penalty of $100,000 per calendar year. If a person fails to include all of the information required to be shown on an information return or a payee statement or includes incorrect information, then a penalty of $5 may be imposed with respect to each such failure, with a maximum penalty of $20,000 per calendar year. Stricter penalty provisions apply in the case of interest and dividend returns and in the case of intentional failures to comply with the information return requirements. | *In general.*--The bill establishes a three-tier penalty structure for the penalty for failure to file correct information returns in which the amount of the penalty varies with the length of time within which the taxpayer corrects the failure. The bill also provides that taxpayers may correct a *de minimis* number of errors and avoid penalties entirely. The maximum penalty is increased, and special rules apply to small businesses. The stricter penalty provisions applicable to interest and dividends are repealed. The bill makes uniform the reporting requirements applicable to magnetic media, requires a study of procedures to prevent mismatching of information returns, and requires a study of service bureaus, which file information documents on behalf of other persons. | No provision. |
| | A penalty may also be imposed for each failure to include a correct taxpayer identification number on a return or statement and for each failure to furnish a correct taxpayer identification number to another person. The amount of the penalty that may be imposed is either $5 or $50 for each failure, depending on the nature of the failure. | ***Effective date.***--Generally, information returns and payee statements the due date for which (determined without regard to extensions) is after December 31, 1989. | |
| | *Foreign provisions* | *Foreign provisions* | |
| | *Penalties for failure to file withholding statements* --Persons having control, receipt, custody, disposal, or payment of certain types of U.S. income of foreign persons are required to | *Penalties for failure to file withholding statements.*--The bill integrates the penalty for failure to file Form 1042S and failure to provide Form 1042S to the payee into the general penalty | |

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| | deduct and withhold U.S. tax from such income under chapter 3 of the Code's income tax provisions (secs. 1441-1464). Generally, any person required to serve as a withholding agent under chapter 3 must provide each income recipient an annual withholding statement (Form 1042S) and must file all required Forms 1042S with the IRS accompanied by a return (Form 1042) summarizing the information on the Forms 1042S. As described above, the Code generally provides penalties for each failure to file a required information return with the IRS and each failure to provide a required payee statement. These penalties do not apply, however, to each failure with respect to Forms 1042S.<br>*Information reporting*.--Generally, every U.S. person is required to report certain information concerning any foreign corporation that such person controls and information relating to transactions between the corporation and certain specified persons. Failure to provide such information subjects the U.S. person to a monetary penalty plus a denial of foreign tax credits (sec. 6038). These information reporting requirements and this penalty do not specifically refer to all types of information needed to determine tax liabilities with respect to controlled foreign corporations. | structure. Thus, the bill treats each Form 1042S required to be filed with the IRS and provided to a payee as an information return and as a payee statement, respectively, as those terms are defined in section 6724. Accordingly, each failure to file any required Form 1042S will be subject to a separate penalty under section 6721, and<br>each failure to provide a payee any required Form 1042S will be subject to a separate penalty under section 6722.<br>*Information reporting*.--The bill clarifies the reporting requirements and penalties imposed by section 6038 by expressly applying those provisions to failures to provide certain information with respect to related parties, such as controlled foreign corporations of which the person subject to the requirements is a U.S. shareholder.<br>***Effective date***.--Generally, information returns and payee statements the due date for which (determined without regard to extensions) is after December 31, 1989. | |
| 2. **Accuracy penalties (sec. 11721 of the House bill)** | *Overview*.--There are several separate penalties in the Code that relate to accuracy. Some of these penalties are coordinated with each other; others are not. | *Overview*.--The bill consolidates into one part of the Internal Revenue Code all of the generally applicable penalties relating to the accuracy of tax returns. The penalties that are consolidated are the negligence penalty, the substantial understatement penalty, and the valuation penalties. These consolidated penalties | No provision. |

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|  |  | are also coordinated with the fraud penalty. The bill repeals the present-law versions of these penalties. The bill reorganizes the accuracy penalties into a new structure that operates to eliminate any stacking of the penalties.<br>*Accuracy-related penalty*.--The accuracy-related penalty, which is imposed at a rate of 20 percent, applies to the portion of any underpayment that is attributable to (1) negligence, (2) any substantial understatement of income tax, (3) any substantial valuation overstatement, (4) any substantial overstatement of pension liabilities, or (5) any substantial estate or gift tax valuation understatement. |  |
|  | (1) *Negligence*.--If any part of an underpayment of tax required to be shown on a return is due to negligence or disregard of rules or regulations, a penalty may be imposed equal to 5 percent of the total amount of the underpayment. An underpayment of tax that is attributable to a failure to include on an income tax return an amount shown on an information return is treated as subject to the negligence penalty absent clear and convincing evidence to the contrary. | (1) *Negligence*.--If an underpayment of tax is attributable to negligence, the negligence penalty is to apply only to the portion of the underpayment that is attributable to negligence rather than, as under present law, to the entire underpayment of tax. The rate of the penalty is 20 percent. In addition, the bill repeals the present-law presumption under which an underpayment is treated as attributable to negligence if the underpayment is due to a failure to include on an income tax return an amount shown on an information return. |  |
|  | (2) *Substantial understatement penalty*.--If the correct income tax liability of a taxpayer for a taxable year exceeds that reported by the taxpayer by the greater of 10 percent of the correct tax or $5,000 ($10,000 in the case of most corporations), then a substantial understatement exists and a penalty may be imposed equal to 25 percent of the underpayment of tax attributable to the understatement. In determining whether a | (2) *Substantial understatement penalty*.--The accuracy-related penalty that applies to the portion of an underpayment that is attributable to a substantial understatement of income tax is the same as the substantial understatement penalty provided under present law with three principal modifications. First, the rate is lowered to 20 percent. Second, the list of authorities upon which taxpayers may rely (currently contained in Treasury regulations) is expanded to include |  |

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| | substantial understatement exists, the amount of the understatement is reduced by any portion attributable to an item if (1) the treatment of the item on the return is or was supported by substantial authority, or (2) facts relevant to the tax treatment of the item were adequately disclosed on the return or on a statement attached to the return. Special rules apply to tax shelters. | proposed regulations, private letter rulings, technical advice memoranda, actions on decisions, general counsel memoranda, information or press releases, notices, and any other similar documents published by the IRS in the *Internal Revenue Bulletin*. In addition, the list of authorities is to include General Explanations of tax legislation prepared by the Joint Committee on Taxation (the "Blue Book"). Third, the bill requires the IRS to publish not less frequently than annually a list of positions for which the IRS believes there is no substantial authority and which affect a significant number of taxpayers. | |
| | (3) *Valuation penalties.*--If an individual, personal service corporation, or closely held corporation underpays income tax for any taxable year by $1,000 or more as a result of a valuation overstatement, then a penalty may be imposed with respect to the amount of the underpayment that is attributable to the valuation overstatement. A valuation overstatement exists if the valuation or adjusted basis of any property claimed on a return is 150 percent or more of the correct value or adjusted basis. The amount of the penalty that may be imposed increases from 10 to 20 or 30 percent of the underpayment attributable to the valuation overstatement as the percentage by which the valuation claimed exceeds the correct valuation increases. Similar penalties may be imposed with respect to (1) an underpayment of income tax that is attributable to an overstatement of pension liabilities and (2) an underpayment of estate or gift tax that is attributable to a valuation understatement. | (3) *Valuation penalties.*--<br>*(i) Substantial valuation overstatement.*--The penalty that applies to the portion of an underpayment that is attributable to a substantial valuation overstatement is generally the same as the valuation overstatement penalty provided under present law with five principal modifications. First, the bill extends the penalty to all taxpayers. Second, a substantial valuation overstatement exists if the value or adjusted basis of any property claimed on a return is 200 percent or more of the correct value or adjusted basis. Third, the penalty is to apply only if the amount of the underpayment attributable to a valuation overstatement exceeds $5,000 ($10,000 in the case of most corporations). Fourth, the amount of the penalty for a substantial valuation overstatement is 20 percent of the amount of the underpayment if the value or adjusted basis claimed is 200 percent or more but less than 400 percent of the correct value or adjusted basis. Fifth, as explained below, the bill provides that the rate of this penalty is doubled if the value or | |

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|  |  | adjusted basis claimed is 400 percent or more of the correct value or adjusted basis. |  |
|  |  | *(ii) Substantial overstatement of pension liabilities*.--The penalty that applies to the portion of an underpayment that is attributable to a substantial overstatement of pension liabilities is the same as present law, except that the penalty is to apply only if the actuarial determination of pension liabilities is 200 percent or more of the amount determined to be correct. |  |
|  |  | *(iii) Substantial estate or gift tax valuation understatement*.--The penalty applicable to substantial estate or gift tax valuation understatements is the same as present law, except that (1) the taxpayer is subject to this penalty only if the value of any property claimed on an estate or gift tax return is 50 percent or less of the amount determined to be correct, and (2) the threshold below which the penalty does not apply is increased from $1,000 to $5,000. |  |
|  |  | *(iv) Gross valuation misstatements*.--The bill provides that the rate of the accuracy penalty is to be doubled to 40 percent of the underpayment in the case of gross valuation misstatements. |  |
|  | *Fraud penalty*.--If any part of an underpayment of tax required to be shown on a return is due to fraud, a penalty may be imposed equal to 75 percent of the portion of the underpayment that is attributable to fraud. | *Fraud penalty*.--The fraud penalty, which is imposed at a rate of 75 percent, applies to the portion of any underpayment that is attributable to fraud. |  |
|  |  | *Definitions and special rules*.--The bill provides special rules that apply to each of the penalties imposed under the new structure. First, the bill provides standardized exception criteria for all of these accuracy-related penalties: no |  |

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| | | penalty is to be imposed if it is shown that there was reasonable cause for an underpayment and the taxpayer acted in good faith. Second, the bill provides that an accuracy-related or fraud penalty is to be imposed only if a return has been filed. Third, the bill provides a standard definition of underpayment for all of the accuracy-related penalties.<br>***Effective date***.--Generally, returns the due date for which (determined without regard to extensions) is after December 31, 1989. | |
| 3. **Preparer, promoter, and protester penalties (secs. 11731-11739 of the House bill)** | *Return preparer penalties*.--(a) An income tax return preparer is subject to a penalty of $100 if any part of an understatement of tax on a return or claim for refund is due to the return preparer's negligent or intentional disregard of rules and regulations. In addition, an income tax return preparer is subject to a penalty of $500 if any part of an understatement of tax on a return or claim for refund is due to the return preparer's willful attempt in any manner to understate tax. | *Return preparer penalties*.--(a) The bill revises the present-law penalties that apply in the case of an understatement of tax that is caused by an income tax return preparer. First, the bill provides that if any part of an understatement of tax on a return or claim for refund is attributable to a position for which there was not a realistic possibility of being sustained on its merits and if any person who is an income tax return preparer with respect to such return or claim for refund knew (or reasonably should have known) of such position and such position was not disclosed or was frivolous, then that return preparer is subject to a penalty of $250.<br>In addition, the bill provides that if any part of an understatement of tax on a return or claim for refund is attributable to a willful attempt by an income tax return preparer to understate the tax liability of another person or to any reckless or intentional disregard of rules or regulations by an income tax return preparer, then the income tax return preparer is subject to a penalty of $1,000.<br>***Effective date***.--Documents prepared after | No provision. |

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| | | December 31, 1989. | |
| | (b) An income tax return preparer is subject to a penalty of $25 for each failure to (1) furnish a copy of a return or claim for refund to the taxpayer; (2) sign the return or claim for refund; or (3) furnish his or her identifying number. An income tax return preparer is also subject to a penalty of $100 for failure to file an information return. | (b) The return preparer penalties that apply to each failure to (1) furnish a copy of a return or claim for refund to the taxpayer; (2) sign the return or claim for refund; (3) furnish his or her identifying number; and (4) file a correct information return, are made uniform. The penalty is $50 for each failure and the total penalties imposed for any single type of failure for any calendar year are limited to $25,000. | |
| | | ***Effective date***.--Documents prepared after December 31, 1989. | |
| | *Penalty for promoting abusive tax shelters*.--Any person who organizes, assists in the organization of, or participates in the sale of any interest in, a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement, is subject to a penalty if in connection with such activity the person makes or furnishes a false or fraudulent statement or a gross valuation overstatement. The amount of the penalty equals the greater of $1,000 or 20 percent of the gross income derived or to be derived by the person from the activity. It is unclear under present law whether the term "activity" refers to each sale of an interest in a tax shelter or whether it refers to the overall activity of promoting an abusive tax shelter. | *Penalty for promoting abusive tax shelters*.--Under the bill, the amount of the penalty imposed for promoting abusive tax shelters equals $1,000 (or, if the person establishes that it is less, 100 percent of the gross income derived or to be derived by the person from such activity). In calculating the amount of the penalty, the organizing of an entity, plan, or arrangement constitute separate activities. | |
| | | ***Effective date***.--Activities after December 31, 1989. | |
| | *Penalty for aiding and abetting the understatement of tax liability*.--Any person who aids, assists in, procures, or advises with respect to the preparation or presentation of any portion of a return or other document under the tax laws which (1) the person knows will be used in connection with any material matter arising | *Penalty for aiding and abetting the understatement of tax liability*.--The bill amends the penalty for aiding and abetting the understatement of tax liability by imposing the penalty in cases where the person aids, assists in, procures, or advises with respect to the preparation or presentation of any | |

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|  | under the tax laws, and (2) the person knows will (if so used) result in an understatement of the tax liability of another person is subject to a penalty equal to $1,000 for each return or other document ($10,000 in the case of returns and documents relating to the tax of a corporation). | portion of a return or other document if (1) the person knows or has reason to believe that the return or other document will be used in connection with any material matter arising under the tax laws, and (2) the person knows that if the portion of the return or other document were so used, an understatement of the tax liability of another person would result. In addition, the bill provides that a penalty for promoting abusive tax shelters is not to be imposed on any person with respect to any document if an aiding and abetting penalty is imposed on such person with respect to the same document. |  |
|  |  | ***Effective date***.--Activities after December 31, 1989. |  |
|  | *Frivolous income tax return penalty*.-- Any individual who files a frivolous income tax return is subject to a penalty of $500. | *Frivolous income tax return penalty*.--The bill deletes the special provision in present law permitting taxpayers who contest the imposition of this penalty to pay 15 percent of the penalty, which halts further collection proceedings until final judicial resolution of the dispute. |  |
|  |  | ***Effective date***.--Returns filed after December 31, 1989. |  |
|  | *Sanctions and costs awarded by courts* --If it appears to the Tax Court that (1) proceedings before it have been instituted or maintained primarily for delay, (2) the taxpayer's position is frivolous, or (3) the taxpayer has unreasonably failed to pursue administrative remedies, the Court may award damages not to exceed $5,000 to the United States. | *Sanctions and costs awarded by courts*.--The bill authorizes the Tax Court to impose a penalty not to exceed $25,000 if a taxpayer (1) institutes or maintains a proceeding primarily for delay, (2) takes a position that is frivolous, or (3) unreasonably fails to pursue available administrative remedies. |  |
|  |  | The bill also authorizes the Tax Court to require any attorney or other person permitted to practice before the Court to pay excess costs, |  |

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| | | expenses, and attorney's fees that are incurred because the attorney or other person unreasonably and vexatiously multiplied any proceeding before the Court. If the attorney is appearing on behalf of the Commissioner of Internal Revenue, the United States is to pay these costs in the same manner as an award of these costs by a district court. | |
| | | *Effective date.*--Proceedings pending on, or commenced after December 31, 1989. | |
| | *Authority to counterclaim for balance of penalty in partial refund suits.*--Taxpayers may pay a portion of the penalties for failure to collect and pay over tax, for understatement of a taxpayer's liability by an income tax return preparer, for promoting abusive tax shelters, and for aiding and abetting the understatement of tax liability. By doing so, they may obtain judicial review of the imposition of these penalties. Present law may prohibit the Federal Government from counterclaiming for the balance of the penalty in the same lawsuit. | *Authority to counterclaim for balance of penalty in partial refund suits.*--The bill clarifies that, where taxpayers utilize the provisions of present law (other than with respect to frivolous income tax returns) that permit partial (rather than full) payment of certain penalties to obtain judicial review of the imposition of these penalties, the United States may counterclaim as part of the same lawsuit for the remainder of the penalty. | |
| | | ***Effective date.***--Date of enactment. | |
| | *Bonding requirement.*--Return preparers may post a bond, thereby preventing any proceeding by the Federal Government under section 7407 seeking to<br>enjoin a return preparer from engaging in prohibited conduct. | *Repeal of bonding requirement.*--The bill repeals the provision permitting return preparers to post a bond and thereby prevent any proceeding by the Federal Government under section 7407 seeking to enjoin a return preparer from engaging in prohibited conduct. | |
| | | ***Effective date.***--Actions or proceedings commenced after December 31, 1989. | |
| | *Disclosure of certain information by return preparers* --In general, return preparers are subject to penalty for disclosing tax return information that is furnished to the return | *Disclosure of certain information by return preparers.*--The bill provides that the IRS regulations relating to the use of tax information by return preparers are to provide that a return | |

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|  | preparer in connection with the preparation of tax returns. The IRS may by regulation provide exceptions to this general prohibition. | preparer may disclose tax information to another return preparer solely for purposes of quality or peer reviews.<br>***Effective date***.--Date of enactment. |  |
| 4. **Delinquency penalties (secs. 11741-11743 of the House bill)** | *Failure to file*.--A taxpayer who fails to file a tax return on a timely basis is subject to a penalty equal to 5 percent of the net amount of tax due for each month that the return is not filed, up to a maximum of 5 months or 25 percent. The net amount of tax due is the excess of the amount of the tax required to be shown on the return over the amount of any tax paid on or before the due date prescribed for the payment of tax. | *Failure to file*.--The bill modifies present law by providing that the fraud and negligence penalties are not to apply in the case of a negligent or fraudulent failure to file a return. Instead, the bill provides that in the case of a fraudulent failure to file a return, the failure to file penalty is to be increased to 15 percent of the net amount of tax due for each month that the return is not filed, up to a maximum of 5 months or 75 percent. The burden of proof on the fraud element of this increased portion of the penalty is on the IRS.<br>***Effective date***.--Returns the due date for which (determined without regard to extensions) is after December 31, 1989. | No provision. |
|  | *Failure to make timely deposits of tax*.--If any person who is required to deposit taxes imposed by the Internal Revenue Code with a government depositary fails to deposit such taxes on or before the prescribed date, a penalty may be imposed equal to 10 percent of the amount of the underpayment, unless it is shown that such failure is due to reasonable cause and not willful neglect. The amount of the underpayment for this purpose is the excess of the amount of the tax required to be deposited over the amount of the tax, if any, deposited on or before the prescribed date. | *Failure to make timely deposits of tax*.--The bill establishes a four-tiered penalty structure in which the amount of the penalty varies with the length of time within which the taxpayer corrects the failure. A depositor is subject to a penalty equal to 2 percent of the amount of the underpayment if the failure is corrected on or before the date that is 5 days after the prescribed due date. A depositor is subject to a penalty equal to 5 percent of the amount of the underpayment if the failure is corrected after the date that is 5 days after the prescribed due date but on or before the date that is 15 days after the prescribed due date. A depositor is subject to a penalty equal to 10 |  |

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|  |  | percent of the amount of the underpayment if the failure is corrected after the date that is 15 days after the due date but on or before the date that is 10 days after the date of the first delinquency notice to the taxpayer. Finally, a depositor is subject to a penalty equal to 15 percent of the amount of the underpayment if the failure is not corrected on or before the date that is 10 days after the date of the first delinquency notice to the taxpayer.<br>***Effective date***.--Deposits that are required to be made after December 31, 1989. |  |
|  | *Failure to withhold on income of foreign persons*.--Persons having control, receipt, custody, disposal, or payment of certain types of U.S. income of foreign persons are required to deduct and withhold U.S. tax from such income under chapter 3 of the Code's income tax provisions. The amount withheld is credited against the U.S. tax liability of the foreign income recipient.<br>Where a tax on the U.S. income of a foreign recipient was required to be withheld but the withholding agent failed to do so, and instead the tax is paid by the income recipient, a penalty may be imposed on the recipient or the withholding agent for failure to pay the tax only if the failure was fraudulent and for the purpose of evading payment. By contrast, where a U.S. employer fails to withhold income tax from an employee's wages but the employee pays the tax due, the employer remains liable for any penalties and additions to tax otherwise applicable. | *Failure to withhold on income of foreign persons*.--In cases where a tax on the U.S. income of a foreign person was required to be withheld under chapter 3 but was not in fact withheld, and the person who would have been entitled to a credit for any withholding tax paid instead satisfies its own proper tax liability, the withholding agent remains liable for any penalties and additions to tax otherwise applicable for failure to withhold.<br>*Effective dates*.--Failures to deduct and withhold taxes after December 31, 1989. |  |

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| 5. **Administrative recommendations to the IRS** | The IRS is generally responsible for administration of the tax laws. | The House committee report contains a number of administrative recommendations to the IRS. | No provision. |

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| **M. Individual Capital Gains** | | | |
| **1. Reduction in capital gains tax rate (secs. 11951-11953 of the House bill)** | | | No provision. |
| ***a. In general*** | *a.* Net capital gain is taxed at the same rate as ordinary income. Under the law prior to the enactment of the Tax Reform Act of 1986, net capital gain was taxed at a lower tax rate. Net capital gain is generally the net gain from the sale or exchange of capital assets held more than one year. | | |
| *(1) Reduction in capital gains tax for dispositions from September 14, 1989, through December 31, 1991* | | *a.* (1) A deduction of 30 percent of the net capital gain from the sale or exchange of assets for the period beginning September 14, 1989, and ending December 31, 1991, is allowed. In addition this gain is not subject to the 5-percent tax known as the "bubble". This results in a maximum regular tax rate of 19.6 percent. | |
| *(2) 28-percent maximum rate beginning January 1, 1992* | | (2) After 1991, net capital gain is not subject the 5-percent tax, resulting in a maximum tax rate of 28 percent. | |
| ***b. Minimum tax*** | *b.* A minimum tax is imposed on individuals at a 21 percent rate. | *b.* The capital gains deduction is not allowed in computing the minimum tax. | |
| ***c. Treatment of collectibles*** | *c.* No special capital gain rules apply to collectibles. | *c.* Gain from the sale or exchange of collectibles is not eligible for the reduced capital gains rate. | |

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| *d. Recapture of real property depreciation* | *d.* Under present law, the excess of accelerated depreciation over straight-line depreciation on real property is recaptured as ordinary income. | *d.* All depreciation on real property is recaptured as ordinary income.<br>***Effective date***.--Dispositions of assets on or after September 14, 1989. | |
| **2. Indexing of basis of certain assets for purposes of determining gain (sec. 11961 of the House bill)** | The adjusted basis of property taken into account in computing gain and loss is not adjusted to take account of inflation. | For dispositions of eligible assets (generally stock and tangible property which is a capital asset or business asset) held more than one year, an individual is allowed to index the basis of the asset for inflation, for purposes of determining gain (but not loss).<br>Gain on assets whose basis is indexed would not be treated as investment income in computing the investment interest limitation, unless the taxpayer elected to forgo indexing the basis of the asset.<br>***Effective date***.--Dispositions of assets acquired after December 31, 1991. | No provision. |

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| N. Other Provisions (Technicals Involving Revenue Effect) | | | |
| 1. **Marital deduction for property passing to noncitizen spouses (sec. 11815(c) of the House bill)** | | These items were included in the technical corrections portion of the House bill. | No provision. |
| *a. Generally* | *a.* The marital deduction generally is disallowed for the value of property passing to a noncitizen spouse. Property passing at death to a noncitizen spouse may, however, qualify for the marital deduction so long as it satisfies the normal requirements for a marital deduction and the property passes in a qualified domestic trust (QDT). | *a.* The marital deduction is allowed for property passing to an alien spouse if the spouse becomes a U.S. citizen before the date the estate tax return of the decedent spouse is filed, so long as the surviving spouse was a U.S. resident at the date of the decedent's death and at all times before becoming a U.S. citizen. | |
| ***b. Definition of qualified domestic trust (QDT)*** | *b.* In order to be a QDT, a trust must meet four conditions. First, the trust instrument must require that all trustees be U.S. citizens or domestic corporations. Second, the surviving spouse must be entitled to all the income from the property in the trust, payable annually or at more frequent intervals. Third, the trust must meet the requirements of Treasury regulations prescribed to ensure collection of the estate tax imposed upon the trust. Finally, the executor must elect to treat the trust as a QDT. | *b.* The rule that all the trustees of a QDT must be U.S. citizens or domestic corporations is modified to require that only one trustee be a U.S. citizen or domestic corporation, so long as that trustee's approval is required for all distributions made from the trust.<br>Also, a trust is treated as a QDT even if the surviving alien spouse does not have an income interest in the trust.<br>In addition, a trust meets the requirements for a QDT if it is reformed to meet those requirements before the filing of the return or in a suit initiated before that time.<br>Finally, the Secretary of the Treasury is directed to prescribe regulations necessary or appropriate to carry out the purposes of the provisions, including regulations treating an annuity includible in a decedent's gross estate as | |

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|  |  | a QDT. |  |
| c. ***Estate tax on QDT*** | *c.* An estate tax is imposed upon distributions from a QDT made prior to the surviving spouse's death and upon the value of property remaining in a QDT upon that spouse's death. The tax is also imposed upon the trust property if a person other than a U.S. citizen or domestic corporation becomes a trustee of the trust or if the trust ceases to meet the requirements of Treasury regulations prescribed to ensure collection of the estate tax. | *c.* The estate tax on a QDT is no longer imposed if the surviving spouse subsequently becomes a U.S. citizen and either (1) the spouse was a U.S. resident at the date of the decedents death and at all times before becoming a U.S. citizen, or (2) the spouse elects to reduce his unified credit and amounts subject to lower transfer tax brackets by the amount of prior taxable distributions made from the trust.<br>The charitable and marital deductions, capital gains treatment of redemptions of stock to pay estate tax, alternate valuation, special use valuation, and extension of time to pay estate tax is allowed against the estate tax on QDTs if allowable to the estate of the surviving spouse. |  |
| d. ***Exclusion from estate tax on QDT*** | *d.* The estate tax on a QDT is not imposed on distributions of "income," as defined under local law. | *d.* The Secretary of the Treasury is granted regulatory authority to modify the definition of "income" in order to ensure that trust distributions do not deplete trust corpus. In addition, the rule excluding income distributions from the tax on distributions is modified to exclude at least $100,000 in distributions annually and all payments made for medical care on behalf of the surviving spouse to a person who provides the care. |  |

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| *e. **Relationship to Treaties*** | *e*. Statutory provisions generally supersede contrary existing statutory or treaty provisions. | *e*. The denial of the marital deduction for certain property passing to noncitizens overrides a marital deduction that may be granted by a contrary existing treaty provision only for taxable years ending after three years after date of enactment.<br>***Effective date***.--Decedents dying after November 10, 1988. | |
| **2. Coordination of foreign tax credit and tax on lump-sum distributions (sec. 11811(h)(13) of the House bill)** | A lump-sum distribution from certain employees' trusts may be eligible for special 5-year averaging treatment which allows the recipient to deduct the amount of the distribution from gross income, and compute a separate tax on that distribution. It was not intended that the deduction of a foreign source lump sum distribution from gross income have the effect of denying a foreign tax credit for foreign income taxes paid with respect to foreign source lump sum distributions. | The House bill provides that the foreign tax credit limitation is applied separately with respect to any lump-sum distribution on which the separate tax of section 402(e)(1) is imposed, and the amount of the distribution is treated as taxable income for purposes of computing the limitation.<br>***Effective date***.-- Effective as if included in the provision of the 1988 Act to which it relates. | No provision. |